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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~334~~ 283

THE TOWN OF MOUNT PLEASANT AND THE TOWN OF CALEDONIA, APPELLANTS,

vs.

WILLIAM W. CORNELL AND LATHAM C. STRONG, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF LATHAM CORNELL, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED OCTOBER 13, 1877.

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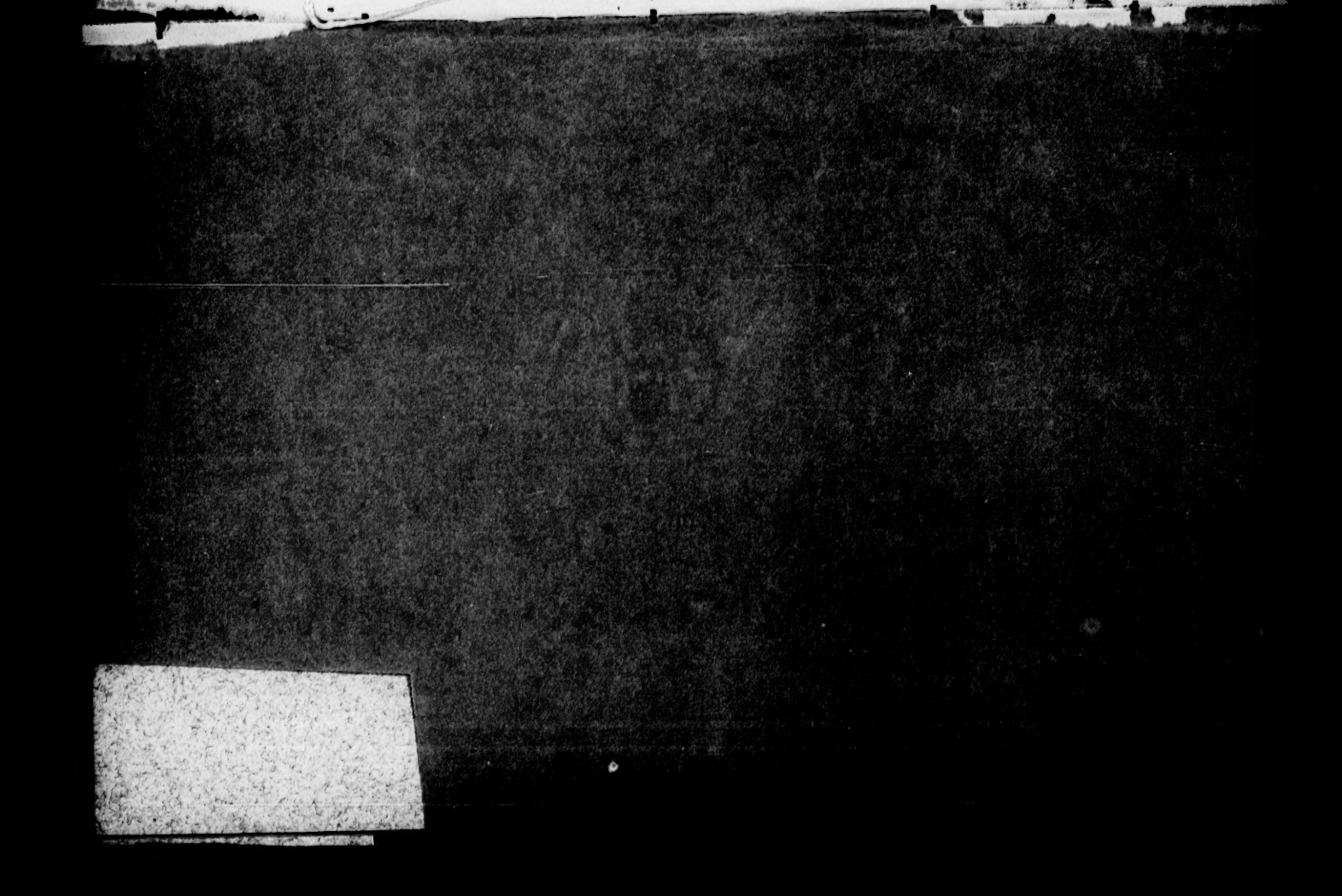

SUPREME COURT OF THE UNITED STATES.

No. 527.

THE TOWN OF MOUNT PLEASANT AND THE TOWN OF CALEDONIA, APPELLANTS,

vs.

WILLIAM W. CORNELL AND LATHAM C. STRONG, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF LATHAM CORNELL, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

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1 Circuit Court of the United States for the Eastern District of Wisconsin.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF WISCONSIN. } *ss.*

At a stated term of the Circuit Court of the United States of America for the Eastern District of Wisconsin, begun and held according to law at the city of Milwaukee, in said district, on the first Monday (being the first day) of January, A. D. 1877.

Present and presiding, the Honorable Thomas Drummond, circuit judge.

Charles S. Hamilton, marshal; Edward Kurtz, clerk.

Among other, the following proceedings were had, to wit:

WILLIAM W. CORNELL AND LATHAM C. STRONG, as executors of the last will and testament of Latham Cornell, deceased, Complainants,
vs.
THE TOWN OF MOUNT PLEASANT, THE TOWN OF Caledonia, and the City of Racine, Defendants. } In Equity.

Be it remembered, that heretofore, to wit, on the 1st day of April, A. D. 1873, came the said Latham Cornell, complain-
2 ant, by his solicitors, Messrs. Fuller & Dyer, and filed his bill of complaint against the above-named defendants, as follows, to wit:

Bill of Complaint.

The Circuit Court of the United States, in and for the Eastern District in the State of Wisconsin, in chancery sitting.

LATHAM CORNELL, COMPLAINANT,
against
THE TOWN OF MOUNT PLEASANT, the Town of Caledonia, and the City of Racine, Defendants.

To the judges of the Circuit Court of the United States for the Eastern District of the State of Wisconsin, in the United States of America.

Latham Cornell, of the city of Troy, in the State of New York, and a citizen and resident of the State of New York, brings this his bill against the town of Mount Pleasant, the town of Caledonia, and the city of Racine, each of said defendants being corporations municipal, created and existing under and by virtue of the laws of the State of Wisconsin, in the county of Racine, in the State of Wisconsin, and, within the meaning of the law, citizens

and residents of the said State of Wisconsin, in the eastern
3 district of the State of Wisconsin.

The complainant, Latham Cornell, complains, alleges, and avers, that by an act of the legislature of the Territory of Wisconsin, which territory now is the State of Wisconsin, passed on or about the 2d day of January, A. D. 1838, entitled "An act to establish the several towns in the counties of Milwaukee, Brown, and Racine, and the counties thereto attached, for judicial purposes," the town of Racine, in said county of Racine, in said then Territory (now State) of Wisconsin, was created and established and then became a corporation municipal; that by the terms of such act the territorial boundaries and limits of the said town of Racine were fixed and included within and described in terms, to wit: commencing on Lake Michigan at the south line of town. three (3) north, fractional range twenty-three (23) east; thence due west by said line to the southwest corner of section thirty-five (35) of town. three (3) north, of range twenty-two (22) east; thence north to the north line of town. four (4); thence east with said line to Lake Michigan; thence southerly by said lake to the place of beginning.

This complainant further alleges and avers, that the said defendant, the town of Mount Pleasant, under and by virtue of an
4 act of the Territory of Wisconsin, now being the State of Wisconsin, entitled "An act to establish the several towns in the counties of Milwaukee, Brown, and Racine, and the counties thereto attached, for judicial purposes," passed and approved on or about the 2d day of January, A. D. 1838, was established and then became a corporation municipal; that by the terms of such act the territorial limits and boundaries of the said town of Mount Pleasant were fixed and included within and described in terms, to wit: that the country included within the following limits, to wit: commencing at the southwest corner of Racine town; thence due west to the southwest corner of town. three (3) north, of range twenty-one (21) east; thence north to the north line of town. four (4); thence east to the northwest corner of Racine town; thence south to the place of beginning—which last-described territory and lands, by virtue of the act last aforesaid, were set off into a separate town by the name of the defendant, the town of Mount Pleasant.

This complainant further avers and alleges, that by an act of the legislature of the Territory of Wisconsin, now the State of Wisconsin, entitled "An act to organize certain towns in the county of Racine," passed and approved February 7th, A. D. 1842, the said defendant, the town of Caledonia, was created a body corpo-
5 rate and municipal, and its territorial limits were then established by said law to be and were all that part of the towns of Racine and Mount Pleasant comprised in town. four (4), in range twenty-two (22) east, in said county of Racine, and in the then Territory and now the State of Wisconsin; and by the provisions

of section three of the same act the boundaries of the town of Mount Pleasant were changed so as to include within said town the following territory: all of township No. three (3) north, of range twenty-two (22) east, except section No. thirty-one (31) of said town.

That the said defendant, the city of Racine, in and by virtue of an act of the legislature of the State of Wisconsin, entitled "An act to incorporate the city of Racine, in the county of Racine," passed and approved August 8th, A. D. 1848, was erected and created; in and by which act the country and territorial limits were described as follows, to wit: the district of country included within the following limits and boundaries in township number three (3), of range number twenty-three (23), in the county of Racine and State of Wisconsin, to wit: fractional sections numbered nine (9) and sixteen (16), in said township and range, situated in the said county of Racine and State of Wisconsin.

6 This complainant further avers and alleges, that by an act of the legislature of the State of Wisconsin, entitled "An act to incorporate the Racine, Janesville & Mississippi Railroad Company," passed and approved April 17th, 1852, the corporation, the Racine, Janesville & Mississippi Railroad Company, were incorporated, and by the terms of said act were authorized and empowered to locate, construct, and operate a railroad from the city of Racine, in the county of Racine and State of Wisconsin, through the counties of Rock, Green, La Fayette, and Grant, in said State of Wisconsin, to the Mississippi river; and by such act the said corporation, the Racine, Janesville & Mississippi Railroad Company, were authorized and empowered to organize such corporation and to have and maintain a capital stock of three million dollars, and to issue such stock in shares of one hundred dollars each, and that the said, the Racine, Janesville & Mississippi Railroad Company, by the terms of the act last named, had and now have perpetual succession; to which act and the amendments thereto this complainant hereby refers, and makes the same a part of this bill of complaint.

7 This complainant further alleges and avers, that under and by virtue of the law last hereinbefore named, the corporation, the Racine, Janesville & Mississippi Railroad Company, in the month of April, A. D. 1852, were duly organized, and under and by virtue of said act and organization, the said corporation, the Racine, Janesville & Mississippi Railroad Company, for the purposes named in such act, were authorized and empowered to receive subscriptions to its capital stock, and to issue certificates of stock for the purposes aforesaid.

This complainant further avers and alleges, that by an act of the legislature of the State of Wisconsin, entitled "An act to authorize certain towns to aid in the construction of the Racine, Janesville & Mississippi railroad," passed and approved April 2d, 1853,

being chapter 289 of the laws of said state passed in 1853, the said corporation municipal, to wit, the town of Racine, was authorized and empowered to subscribe for and take capital stock of the said corporation, the Racine, Janesville & Mississippi Railroad Company, to the amount of fifty thousand dollars, and pay for the same and become obligated to pay for the same in the bonds of the said town, payable within twenty years from the date of such bonds, with interest, payable annually in the city of New York, at a rate not exceeding seven per cent. per annum.

8 This complainant further alleges and avers, that the said corporation, the town of Racine, on or about the 6th day of December, A. D. 1853, pursuant to the provisions of the said act of the said legislature of the State of Wisconsin, the provisions of which act had theretofore been complied with by the said corporation, the town of Racine, by its then duly authorized officers and agents, subscribed for and took fifty thousand dollars of the capital stock of the said corporation, the Racine, Janesville & Mississippi Railroad Company; whereupon, and in payment for such stock subscribed for as aforesaid, the said corporation, the town of Racine, on or about the said 6th day of December, A. D. 1853, under and with its corporate seal, and by its then officers, duly authorized, did make and deliver to the said corporation, the Racine, Janesville & Mississippi Railroad Company, one hundred bonds, with coupons or interest-warrants attached thereto, which bonds were numbered from one to one hundred, inclusive, and each and every of them, except the numbers, are in substance and form as follows, to wit:

9 By special authority of the State Legislature.

United States of America,

Town of Racine.—State of Wisconsin.

No. ——. $500.

The town of Racine acknowledge themselves to owe the Racine, Janesville & Mississippi Railroad Company the sum of five hundred dollars for five shares of one hundred dollars each in the capital stock of said company, subscribed for and purchased of said company by said town, which sum said town promise to pay to said company, or to the holder hereof, at their office in the city of New York, on the tenth day of February, 1873, and also interest thereon at the rate of seven per centum per annum, payable annually on the tenth day of each February ensuing the date hereof, until the said principal sum shall be paid, on presentation of the annexed interest-warrants at said office.

And it is further agreed that this obligation and all rights and benefits arising therefrom may be transferred by general or special endorsement or by delivery, as if the same were a note of hand payable to bearer.

[SEAL.] In testimony whereof, the board of supervisors of said town have caused to be affixed its corporate seal and these presents to be subscribed by their chairman and attested by the clerk thereof, this 6th day of December, 1853.

Attest, JAS. MOTT TITUS. STEPHEN N. IVES, *Chairman*.
JAS. MOTT TITUS, *Clerk*.

I, J. Mott Titus, clerk of the town of Racine, do hereby certify that the foregoing obligation is issued in pursuance of a special act of the legislature of the State of Wisconsin, entitled "An act to authorize certain towns to aid in the construction of the Racine, Janesville & Mississippi railroad, approved April 2, 1853," and sanctioned by a majority of the legal voters of said town at an election duly held for such purpose December 5, 1853.

JAS. MOTT TITUS, *Clerk*.

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1873, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer*.

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1872, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer*.

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1871, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer*.

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1870, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer*.

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1869, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on pre-

sentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1868, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1867, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1866, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the *Bond* of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1865, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1864, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1863, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1862, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1861, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1860, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1859, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1858, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1857, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1856, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on pre

sentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1855, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1854, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

10 This complainant further alleges and avers, that for a valuable consideration by him paid to the said corporation, the Racine, Janesville & Mississippi Railroad Company, on or about the 10th day of January, A. D. 1854, the said corporation, the Racine, Janesville & Mississippi Railroad Company, sold and delivered to this complainant, and he, this complainant, became possessed of and the owner of all those certain bonds made, executed, and issued by the said corporation, the town of Racine, each for the principal sum of five hundred dollars, bearing interest at the rate of seven per cent., payable annually, hereinbefore described, numbered from one to sixty-nine inclusive, and numbered from ninety to one hundred inclusive, said bonds being of the denomination and containing the conditions and covenants hereinabove described and stated; which bonds, and each of them, are now in full force and effect, and wholly unpaid and unsatisfied, principal and interest, to wit: the sum of forty thousand dollars principal, and the interest thereon, at the rate of seven per cent. per annum, from the 10th day of February, 1853.

By chapter 68 of the local laws of the State of Wisconsin for the year 1857, approved February 23d, 1857, the boundaries of the towns of Caledonia, Mt. Pleasant, and Racine were changed,
11 and said towns severally made to include the following territory:

Caledonia. All the territory in the county of Racine east of the line between ranges twenty-one and twenty-two, and north of a line running from the southwest corner of sec. 19, town. 4, range 22 east, eastwardly on section lines to the east line of the county of Racine.

Mount Pleasant. All the territory in said county of Racine east of the line between ranges 21 and 22, and south of a line running from the southwest corner of section 7, town. 3, range 22, eastwardly on section lines to the east line of said county, except fr. section 16 of town. 3, range 23 E.

Racine. All the territory in said county lying between the towns of Caledonia and Mt. Pleasant as above bounded, and east of the range line between ranges 21 and 22, except fr. section 9 of town. 3, range 23 E.

This complainant further avers and alleges, that on or about the 2d day of December, A. D. 1859, the name of the said corporation, the town of Racine, was changed to that of the town of Orwell; and this complainant further alleges, that by an act of the legislature of the State of Wisconsin, entitled "An act to vacate and extinguish the town of Orwell, in the county of Racine, and to attach the territory comprising the same to the towns of Mount
12 Pleasant and Caledonia, in said county," passed and approved March 30th, 1860, the corporation and body-politic formerly known as the town of Racine, and subsequently as the town of Orwell, in the county of Racine, was in terms by said act last named vacated and extinguished, and, thereafter, to wit, after the said 30th day of March, 1860, had no existence, and now has no existence, as a separate and independent body-politic and corporate, except as provided in the said act last hereinabove named; that all that portion of the territory in the said town of Orwell, formerly known as the town of Racine, lying north of the line between township number three (3) and township number four (4), was by the terms of said act of said legislature annexed to and became a part of the territory and lands of the town Caledonia, one of the above-named defendants; and all that part of the said territory of the said town of Orwell, formerly known by the name of the town of Racine, which lies south of said line between said townships number three (3) and four (4), was annexed to and became a part of the territory and lands of the town of Mount Pleasant, one of the defendants hereinabove named; and this complainant, for greater certainty, hereby refers to and makes the said act last above named a part of this complaint.

13 This complainant further alleges and avers, that by an act of the legislature of the State of Wisconsin, entitled "An act to amend an act entitled an act and consolidate an act to incorporate the city of Racine, approved August 8th, 1848, and the several acts amendatory thereof, approved March 22, 1866, and the several acts amendatory thereof, and to extend the corporate limits of said city of Racine," passed and approved March 17th, 1871, the territorial limits and boundaries of the city of Racine were extended, and such boundaries and limits of said city of Racine now include all of the territory and lands described as follows, to wit: commencing at a point where the east and west center line of

section number twenty-one (21) in township number three (3) north, in range number twenty-three (23) east, strikes the waters of Lake Michigan; thence west on the east and west center line of sections number twenty-one and twenty, to the southwest corner of the east half of the northeast quarter of section number twenty; thence north parallel with the east line of sections numbers twenty and seventeen to a point eight rods north of the north line of the Racine and Rock River Plank Road, so called; thence easterly parallel to the north line of said plank road to the east line of said section number seventeen; thence north on the east line of said sec-
14 tion seventeen aforesaid to the center of Root river; thence southwesterly along the center of the said river to a point eighty rods west of the east line of said section number seventeen; thence north parallel to and eight rods distant from the east line of section number seventeen, eight and five, to the east and west center line of section number five; thence east on the east and west center line of sections number five and four to the center of said section number four; thence south forty rods; thence east to the waters of Lake Michigan; from thence to the place of beginning.

This complainant further alleges, that in and by the terms of the last hereinabove-named act of the legislature of the State of Wisconsin, it is provided that the said city of Racine, one of the defendants herein named, shall assume and pay so much of the municipal indebtedness of the former town of Racine, as the lands described in said act last named herein may be or become legally chargeable with and liable to pay, as stated and provided by the terms and provisions of the law and act of the State of Wisconsin herein last above named.

This complainant further alleges and avers, that the said defendants, the town of Mount Pleasant, the town of Caledonia, and the city of Racine, are now possessed of and have within
15 their territorial limits the lands and territory which formed and comprised the municipal corporation, the town of Racine, at the time when the said town of Racine made, executed, and delivered its bonds hereinabove described; and this complainant avers that the said defendants, the said town of Mount Pleasant, the town of Caledonia, and the city of Racine, are justly indebted to and owe to this complainant the said sum of $40,000 principal, and interest thereon from the said 10th day of February, 1853, in terms secured to be paid by the said bonds issued by the said municipal corporation, the town of Racine, as hereinabove stated and described.

This complainant charges and alleges, that he has no adequate remedy in the premises at common law, and is only relievable by the aid and interposition of your honorable court in chancery sitting, where matters of this nature are properly cognizable and relievable. To the end, therefore, that the defendants may, if they can, show cause why this complainant should not have the relief

hereby prayed and demanded, may according to the best and utmost of their several and respective knowledge, information, remembrance, and belief, full, true, direct, and perfect answer make to all and singular the matters aforesaid, this complainant
16 hereby waiving the necessity of the answers of the said defendants being put in under oath; and may it please this court that the respective liabilities of each and all of the defendants upon the bonds hereinbefore mentioned and described, be ascertained, determined, and decreed by this court; that the amount due and owing to complainant on said bonds be also ascertained and determined, and that the defendants be adjudged and decreed to pay to complainant the amount, principal and interest, which may be by this court found to be due and owing to him thereon; that said several defendants and their respective officers be adjudged and decreed to take such necessary steps and proceedings as shall be necessary to secure the payment to complainant of the amount found due and owing to him upon said bonds; that it may also be ascertained and determined by this court what lands, property, and territory of said defendants are liable and obligated for the payment of the moneys secured to be paid by said bonds, and that on the final hearing of this cause complainant may have such other or further relief as may be agreeable to equity and good conscience.

May it please your honors to grant unto this complainant the writ of subpœna issuing out of and under the seal of this
17 honorable court against the defendants, the town of Mount Pleasant, the town of Caledonia, and the city of Racine, commanding them, and each and every of them, to appear and answer all and singular the premises herein stated, and abide by and perform such order and decree as may be made herein.

And this complainant will ever pray, &c.

LATHAM CORNELL.
FULLER & DYER,
Solicitors for Complainant, Racine, Wisconsin.

CHARLES E. DYER, *of Counsel.*

UNITED STATES OF AMERICA,
STATE OF WISCONSIN,
EASTERN DISTRICT OF WISCONSIN. } *ss.*

Henry T. Fuller, being duly sworn, doth depose and say that he is one of the attorneys for Latham Cornell, the complainant named in the above and foregoing bill of complaint; that the said Latham Cornell resides in the city of Troy, in the State of New York, and is not now within the State of Wisconsin; that this deponent resides in the city of Racine, in the said State of Wisconsin; that he, this deponent, makes this affidavit and verification for and on behalf of the said complainant, Latham Cornell; that this deponent has read the above and foregoing bill of complaint, and knows the contents

section number twenty-one (21) in township number three (3) north, in range number twenty-three (23) east, strikes the waters of Lake Michigan; thence west on the east and west center line of sections number twenty-one and twenty, to the southwest corner of the east half of the northeast quarter of section number twenty; thence north parallel with the east line of sections numbers twenty and seventeen to a point eight rods north of the north line of the Racine and Rock River Plank Road, so called; thence easterly parallel to the north line of said plank road to the east line of said section number seventeen; thence north on the east line of said sec-
14 tion seventeen aforesaid to the center of Root river; thence southwesterly along the center of the said river to a point eighty rods west of the east line of said section number seventeen; thence north parallel to and eight rods distant from the east line of section number seventeen, eight and five, to the east and west center line of section number five; thence east on the east and west center line of sections number five and four to the center of said section number four; thence south forty rods; thence east to the waters of Lake Michigan; from thence to the place of beginning.

This complainant further alleges, that in and by the terms of the last hereinabove-named act of the legislature of the State of Wisconsin, it is provided that the said city of Racine, one of the defendants herein named, shall assume and pay so much of the municipal indebtedness of the former town of Racine, as the lands described in said act last named herein may be or become legally chargeable with and liable to pay, as stated and provided by the terms and provisions of the law and act of the State of Wisconsin herein last above named.

This complainant further alleges and avers, that the said defendants, the town of Mount Pleasant, the town of Caledonia, and the city of Racine, are now possessed of and have within
15 their territorial limits the lands and territory which formed and comprised the municipal corporation, the town of Racine, at the time when the said town of Racine made, executed, and delivered its bonds hereinabove described; and this complainant avers that the said defendants, the said town of Mount Pleasant, the town of Caledonia, and the city of Racine, are justly indebted to and owe to this complainant the said sum of $40,000 principal, and interest thereon from the said 10th day of February, 1853, in terms secured to be paid by the said bonds issued by the said municipal corporation, the town of Racine, as hereinabove stated and described.

This complainant charges and alleges, that he has no adequate remedy in the premises at common law, and is only relievable by the aid and interposition of your honorable court in chancery sitting, where matters of this nature are properly cognizable and relievable. To the end, therefore, that the defendants may, if they can, show cause why this complainant should not have the relief

hereby prayed and demanded, may according to the best and utmost of their several and respective knowledge, information, remembrance, and belief, full, true, direct, and perfect answer make to all and singular the matters aforesaid, this complainant
16 hereby waiving the necessity of the answers of the said defendants being put in under oath; and may it please this court that the respective liabilities of each and all of the defendants upon the bonds hereinbefore mentioned and described, be ascertained, determined, and decreed by this court; that the amount due and owing to complainant on said bonds be also ascertained and determined, and that the defendants be adjudged and decreed to pay to complainant the amount, principal and interest, which may be by this court found to be due and owing to him thereon; that said several defendants and their respective officers be adjudged and decreed to take such necessary steps and proceedings as shall be necessary to secure the payment to complainant of the amount found due and owing to him upon said bonds; that it may also be ascertained and determined by this court what lands, property, and territory of said defendants are liable and obligated for the payment of the moneys secured to be paid by said bonds, and that on the final hearing of this cause complainant may have such other or further relief as may be agreeable to equity and good conscience.

May it please your honors to grant unto this complainant the writ of subpœna issuing out of and under the seal of this
17 honorable court against the defendants, the town of Mount Pleasant, the town of Caledonia, and the city of Racine, commanding them, and each and every of them, to appear and answer all and singular the premises herein stated, and abide by and perform such order and decree as may be made herein.

And this complainant will ever pray, &c.

LATHAM CORNELL.
FULLER & DYER,
Solicitors for Complainant, Racine, Wisconsin.

CHARLES E. DYER, *of Counsel.*

UNITED STATES OF AMERICA,
STATE OF WISCONSIN,
EASTERN DISTRICT OF WISCONSIN. } *ss.*

Henry T. Fuller, being duly sworn, doth depose and say that he is one of the attorneys for Latham Cornell, the complainant named in the above and foregoing bill of complaint; that the said Latham Cornell resides in the city of Troy, in the State of New York, and is not now within the State of Wisconsin; that this deponent resides in the city of Racine, in the said State of Wisconsin; that he, this deponent, makes this affidavit and verification for and on behalf of the said complainant, Latham Cornell; that this deponent has read the above and foregoing bill of complaint, and knows the contents

thereof, and that the same is true of his own knowledge,
18 except as to the matters which are therein stated upon information and belief, and as to those matters he believes it to be true.

Deponent further says he derives such knowledge and the truth of the statements contained in said bill of complaint by personally acting as attorney for said complainant for more than ten years last past, and from information derived from the records and papers of the said town of Racine and the laws of the State of Wisconsin. Deponent further says that the bonds described in the above bill of complaint have been in his possession as the attorney of said Latham Cornell during the five years last past, and that he has had charge of the same for collection, under instructions and directions of the said complainant, Latham Cornell.

HENRY T. FULLER.

Subscribed and sworn to, this 31st day of March, A. D. 1873.

CHARLES H. LEE,
United States Commissioner Eastern Dist. Wisconsin.

Whereupon a subpœna issued returnable the first Monday of May next, as follows:

19 UNITED STATES OF AMERICA,
EASTERN DISTRICT OF WISCONSIN. }

The President of the United States of America to the town of
[SEAL.] Mount Pleasant, the town of Caledonia, and the city of Racine, greeting:

You are hereby commanded, that you personally appear before the judges of the Circuit Court of the United States of America for the Eastern District of Wisconsin, in our court of chancery in and for the district aforesaid, on the first Monday of May next ensuing, at Milwaukee, to answer to a bill of complaint, exhibited against you in our said court by Latham Cornell.

And to do further, and receive what our said court shall have considered in that behalf: and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said the town of Mount Pleasant, the town of Caledonia, and the city of Racine, if to be found in his district, and due return thereof make.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this first day of April, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the ninety-seventh.

FULLER & DYER, *Solicitors.* EDWARD KURTZ, *Clerk.*

It is ordered by our said court that the said the town of Mount Pleasant, the town of Caledonia, and the city of Racine, the defendants aforesaid, do enter their appearance in this suit in the clerk's office, on or before the day and time at which this subpœna is returnable as aforesaid; otherwise the bill filed may be taken as confessed.

20 *Return to Subpœna.*

Subpœna returned; "served the within subpœna on within-named city of Racine, by delivering to R. Doud, the mayor, and James Beaugrand, the clerk of said city, personally, each a true copy of the within, and showing to each the original, on the 2d day of April, 1873. And I further certify that on said 2d day of April, 1873, I served the within subpœna on the town of Mount Pleasant, by delivering to R. Richards, the chairman of supervisors of said town, and O. C. Munroe, the clerk of said town, personally, each a true copy of the same, and by showing to each the original. And I further certify that on said 2d day of April, 1873, I served the within subpœna on the town of Caledonia, by delivering to the chairman, J. Hermes, of said town, and F. Seebach, the clerk of said town, personally, each a true copy, and by showing to each the original. C. S. Hamilton, marshal, by F. Schneider, deputy."

Fees $19.40.

April 15, 1873.—This day came Messrs. Fish & Lee and filed their appearance as solicitors for the defendant, the town of Mount Pleasant, as follows:

Appearance.

CIRCUIT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF WISCONSIN.

LATHAM CORNELL
vs.
21 THE TOWN OF MOUNT PLEASANT,
The Town of Caledonia, et al.

The undersigned hereby give notice that they have been retained by the defendants, the town of Mount Pleasant, and they appear for said defendant in the above-entitled cause as their solicitors.

Racine, April 14th, 1873.

FISH & LEE,
Solicitors for Deft., Town of Mt. Pleasant, Racine, Wis.

April 16, 1873.—This day came Messrs. Jenkins & Elliott and filed their appearance as solicitors for the defendant, the town of Caledonia, as follows:

U. S. CIRCUIT COURT,
EASTERN DISTRICT WIS.

LATHAM CORNELL
vs.
THE CITY OF RACINE, THE TOWN of Mount Pleasant, and The Town of Caledonia. } In Equity.

SIR: Please enter our appearance for the defendant, the town of Caledonia,

Dated Milwaukee, April 16th, 1873.

JENKINS & ELLIOTT,
Sol'rs for Defendant, the Town of Caledonia.

To EDWARD KURTZ, Esq., *Clerk.*

22 May 5, 1873.—This day came Mr. S. B. Van Buskirk, and filed his appearance as solicitor for the defendant, the city of Racine, as follows:

UNITED STATES OF AMERICA.

The Circuit Court of the United States in and for the Eastern District in the State of Wisconsin. In chancery sitting.

LATHAM CORNELL, Complainant,
against
THE TOWN OF MOUNT PLEASANT, THE Town of Caledonia, and the City of Racine, Defendants.

SIR: Please to enter my appearance for the city of Racine, one of the defendants in the above cause.

Dated May 5th, 1873. S. B. VAN BUSKIRK,
Solicitor for Deft., the City of Racine.

To EDWARD KURTZ, *Clerk U. S. Circuit Court.*

June 2, 1873.—This day came the defendant, the town of Mount Pleasant, by its solicitors, Messrs. Fish & Lee and Palmer, Hooker & Pitkin, and filed its demurrer, as follows:

Demurrer of the Town of Mount Pleasant.

In the Circuit Court of the United States for the Eastern District of Wisconsin.

23 LATHAM CORNELL
vs.
THE TOWN OF MOUNT PLEASANT, the Town of Caledonia, and the City of Racine.

The demurrer of the town of Mount Pleasant, defendant, to the bill of complaint of Latham Cornell, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth, that the said complainant hath not in and by his said bill made or stated such a case as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for, from or against this defendant; wherefore this defendant demands the judgment of this honorable court, whether he shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

FISH & LEE,
PALMER, HOOKER & PITKIN,
Solicitors for the Town of Mount Pleasant.

24 I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

H. L. PALMER, *of Counsel.*

EASTERN DISTRICT OF WISCONSIN, } *ss.*
MILWAUKEE COUNTY. }

H. L. Palmer, being duly sworn, says, that he is one of the attorneys for the defendant, the town of Mount Pleasant above named, and makes this affidavit on its behalf; that said defendant is a corporation; that the foregoing demurrer is not interposed for delay.

H. L. PALMER.

Subscribed and sworn to before me, this 2nd day of June, A. D. 1873.

HORACE L. PALMER,
Notary Public, Milwaukee Co., Wis.

And same day (June 2, 1873) came the defendant, the town of Caledonia, by its solicitors, and filed its demurrer, as follows:

Demurrer of the Town of Caledonia.

In the Circuit Court of the United States for the Eastern District of Wisconsin.

LATHAM CORNELL
vs.
THE TOWN OF MOUNT PLEASANT, the Town of Caledonia, and the City of Racine.

25 The demurrer of the town of Caledonia, one of the above-named defendants, to the bill of complaint of Latham Cornell, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth, that the said complainant hath not in and by his said bill made or stated such a case as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for, from or against this defendant.

Wherefore this defendant demands the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

JENKINS & ELLIOTT,
Solicitors for Deft., the Town of Caledonia.

I certify that, in my opinion, the foregoing demurrer is well founded in law.

JAMES G. JENKINS,
Of Counsel for Defendant, the Town of Caledonia.

26 EASTERN DISTRICT OF WISCONSIN, } *ss.*
COUNTY OF MILWAUKEE. }

Jas. G. Jenkins, being duly sworn, says that he is one of the attorneys for the defendant, the town of Caledonia, above named, and makes this affidavit on its behalf; that said defendant is a corporation, and that the foregoing demurrer is not interposed for delay.

JAS. G. JENKINS.

Subscribed and sworn to before me, the 2nd day of June, 1873.

EUGENE S. ELLIOTT,
Notary Public, Mil. Co., Wis.

And same day, June 2, 1873, came the defendant, the city of Racine, by its solicitor, and filed its demurrer, as follows:

Demurrer of the City of Racine.

United States Circuit Court, Eastern District of Wisconsin.

LATHAM CORNELL, PLAINTIFF,
vs.
THE TOWN OF MOUNT PLEASANT, the Town of Caledonia, and the City of Racine, Defendants.

The city of Racine, one of the defendants above named, by protestation, and not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true
27 in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth:

First. That the said defendant, the city of Racine, is not a necessary or proper party to the complainant's said bill.

Second. That the said complainant has an adequate remedy at law for the alleged cause of action in the complainant's bill set forth; and

Third. That the said complainant hath not in and by said bill made or stated such a case as doth entitle him to any such discovery or relief as is therein sought and prayed for, or any discovery or relief from or against this defendant.

Wherefore this defendant demands the judgment of this court whether he shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

Dated June 2, 1873.

S. B. VAN BUSKIRK,
Sol. for Deft., the City of Racine.

I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

S. B. VAN BUSKIRK,
Counsel for Deft., the City of Racine.

28 United States Circuit Court, Eastern District of Wisconsin.

LATHAM CORNELL, PLAINTIFF,
vs.
THE TOWN OF MOUNT PLEASANT ET AL.

STATE OF WISCONSIN, } *ss.*
RACINE COUNTY. }

Reuben Doud, being first duly sworn, says that he is the mayor of the city of Racine, one of the defendants named in the foregoing-entitled action, and that the demurrer filed therein is not interposed for delay.

REUBEN DOUD.

Subscribed and sworn to before me, this 2nd day of June, A. D. 1873.

[SEAL.]

SAM'L RITCHIE,
Notary Public, Racine Co., Wis.

July 7, 1873.—"On motion of Fuller & Dyer, complainant's solicitors, ordered that the demurrers to the bill of complaint on file herein be and hereby are set down for argument at the next term of this court, commencing on the first Monday of October next."

November 14, 1874.—This day came the parties by their counsel, and the demurrers of the several defendants to the bill of
29 complaint came on to be heard, and were argued by Messrs. Dyer and Lynde, for the complainant, and by Messrs. J. T.

Fish, L. S. Dixon, James G. Jenkins, S. B. Van Buskirk, and James R. Doolittle, on behalf of the several defendants, and the hearing being concluded, the court took time to consider of the same.

Order Overruling Demurrers.

November 16, 1874.—This day came the parties by their counsel. And on consideration of the demurrers of the several defendants to the bill of complaint in this cause, it is ordered by the court that the said demurrers be and are hereby overruled. And it is further ordered that the defendants answer the bill of complaint by the first day of January next, or the same will be taken as confessed.

Order Substituting Fuller & Harkness Compl't's Solrs.

April 28, 1875.—Upon motion of the complainant's counsel, and the stipulation in writing of the defendants' solicitors filed in the case of Charles Beckwith vs. these defendants, it is ordered by the court that Fuller & Harkness be substituted as solicitors for the complainant. And, same day, (April 28, 1875,) came the defendants by their respective solicitors, and filed their separate answers, as follows:

30 *Answer of the Town of Mt. Pleasant.*

In the Circuit Court of the United States for the Eastern District of Wisconsin. In equity.

The answer of the town of Mt. Pleasant, defendant to the bill of complaint exhibited in this court by Latham Cornell, complainant, against the town of Mount Pleasant, the town of Caledonia, and the city of Racine.

This defendant, the town of Mount Pleasant, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the manifold errors and insufficiencies in complainant's bill of complaint contained, for answer thereunto or unto so much and such parts thereof as this defendant is advised is material for it to make answer unto, answers and says:

That by an act of the legislature of the State of Wisconsin, entitled "An act to amend an act entitled 'An act to incorporate the city of Racine, in the county of Racine,' approved August 8, 1848, and all other acts amendatory thereto," approved March 6, 1856, and being chapter 83 of the Private and Local Acts of the State of Wisconsin for the year 1856, the following described territory, being part of the then territory of the town of Racine, were annexed to and constituted and became part of the city of Racine, to
31 wit: the north half of section twenty-one (21), the northeast quarter of section number twenty (20), the east half of section number seventeen (17), the east half of section number eight

(8), the southeast quarter of section number five (5), and the south half of fractional section number four (4), all in town. number three (3) north, of range twenty-three (23) east.

And this defendant further answering says, that by an act of the legislature of the State of Wisconsin, entitled "An act to annex a part of the town of Racine to the town of Mount Pleasant, in the county of Racine," approved March 20, 1856, and being chapter 180 of the Private and Local Acts of the State of Wisconsin for the year 1856, all of the following described territory, being part of the then town of Racine, was annexed to and became part of the town of Mount Pleasant, in said county of Racine, to wit: all of fractional township three (3), range twenty-three (23) east, lying south of the south line of the north half of sections five (5) and six (6), without the limits of the city of Racine.

And this defendant further answering says, that by an act of the legislature of the State of Wisconsin, entitled "An act to change the boundaries of the towns of Racine, Caledonia, and Mt. Pleasant, in the county of Racine," approved February 23, 1857, and being chapter 68 of the Private and Local Acts of the State of
32 Wisconsin for the year 1857, the boundaries of each of the towns of Racine, Caledonia, and Mt. Pleasant were so altered that each of said towns should include within its limits and consist of the following territory in the county of Racine, to wit:

"The town of Caledonia shall include all that territory in said county east of the west line of range number twenty-two (22) east, which lies between the north line of said county and line running from the southwest corner of section No. nineteen (19) in township No. four (4) north of range No. twenty-two (22) east, eastwardly on the section line to the east line of said county.

"The town of Racine shall include all that territory in said county east of the west line of said range No. twenty-two (22), which lies south of a line running eastwardly from the southwest corner of said section No. nineteen (19), on the section line, to the east line of said county, and north of a line running from the southwest corner of section No. seven (7) in township No. three (3) north, of said range No. twenty-two (22) east, eastwardly on the section line to the east line of said county, excepting therefrom all the territory within said limits, now included in the city of Racine.

"The town of Mount Pleasant shall include all the territory in said county east of the west line of said range No. twenty-
33 two (22) lying south of a line running from the southwest corner of section No. seven (7) aforesaid eastwardly on the section line to the east line of said county and north of the south line of said county, excepting therefrom all of the territory within said limits, now included in the city of Racine."

And this defendant for greater certainty hereby refers to the said several acts hereinbefore alleged, and prays that the same may be taken and considered as part of this answer to said bill of complaint.

And this defendant further answering alleges and avers, that the several acts of the legislature of the State of Wisconsin in said bill of complaint mentioned, and those in this answer hereinbefore alleged, were severally passed and adopted by the said legislature, without the knowledge, procurement, privity, or consent of this defendant.

And this defendant further answering said bill of complaint alleges and avers, that the town of Orwell, or Racine, as the same was constituted and existed prior to the act of March 30th, 1860, at the regular election held according to law in said town in the month of April, 1859, duly elected three supervisors of said town, to hold, and who, according to the laws of the State of Wisconsin then and now existing, held their office for the term of one year, and
34 until their successors in office shall be elected and qualified; that the supervisors of said town so elected were George Wustum, William Place, and Michael Gorman; that said supervisors duly qualified according to law, and entered upon the discharge of their duties as such supervisors; and that no successors have ever been elected or qualified; and that of said supervisors one thereof, to wit, George Wustum, still remains and resides within the county of Racine, and within the territory comprised within the then town of Orwell or Racine; and this defendant is advised and believes, and so charges the fact to be, that the said complainant hath an adequate and complete remedy in the premises at the common law by action against the said town of Orwell or Racine, and that this honorable court, sitting in equity, hath no jurisdiction or right to entertain the said bill of complaint.

And this defendant further answering alleges, that as informed, and as it verily believes true, and charges the fact to be, after the passage of the said act of the legislature of Wisconsin of March 20th, 1856, hereinbefore mentioned, and after the changes in the limits of said corporation, the town of Racine, thereby enacted, had been effected, to wit, on the first day of April, A. D. 1856, a town meeting of such corporation, the town of Racine, was held
35 at the house of one Leopold Houch, in said town of Racine, as then organized and existing, and then and there at such town, pursuant to law, the electors of said town of Racine, as then constituted and organized, proceeded to the election of officers of said town, in which election and meeting no electors residing in the territory by said last-mentioned act annexed to the town of Mount Pleasant; that among the officers then and there elected, one Stephen N. Ives was duly elected by a majority of all the votes cast, and was thereupon duly declared elected as railroad commissioner for said town of Racine, and was appointed such, pursuant to the act of the legislature of the State of Wisconsin, passed on the 2d day of April, A. D. 1853, entitled "An act to authorize certain towns to aid in the construction of the Racine, Janesville and Mississippi railroad," and being chapter 289 of the Private and Local

Acts of said Legislature of the year 1853; that the said Stephen N. Ives, as this defendant is informed and believes true, accepted such office and qualified and acted as such, and represented the stock taken for and by said town of Racine in exchange for the bonds in said bill of complaint mentioned, and voted thereon as such commissioner, pursuant to said act, and until the time of his decease,
to wit, about the month of October, A. D. 1856; and that the
36 board of supervisors of said town of Racine, thereupon appointed one S. A. Herlick as such railroad commissioner, to fill the vacancy occasioned by the death of said Ives: that afterwards, and on the sixth day of December, A. D. 1856, the board of supervisors of said town of Racine, by resolution duly passed on that day, rescinded the appointment of said Herlick, and at the same time passed a certain resolution in the words following, that is to say:

"Resolved, that the town of Racine is in favor and hereby consents to a consolidation of the stock of the Racine and Mississippi Railroad Company with the stock of the Rockford Central Railroad Company; and it is further resolved, that the town-clerk furnish to the secretary of the Racine and Mississippi Railroad Company a copy of this resolution forthwith."

And this defendant avers and alleges, that the corporation mentioned in said resolution as the Racine and Mississippi Railroad Company was the same mentioned in said bill of complaint and in this answer as the Racine, Janesville and Mississippi Railroad Company, and that said Rockford Central Railroad Company was a corporation then and theretofore existing under the laws of the State of Illinois, organized for the purpose of constructing and operating a railroad to the Mississippi river at a point
37 within the State of Illinois.

And this defendant further answering alleges and avers, that said town-clerk did make and furnish a copy of said resolution, as in such resolution directed, and that afterwards the said railroad companies did consolidate their capital stock and business, pursuant to law.

And this defendant further answering alleges and avers, that on the twenty-sixth day of November, A. D. 1856, the board of supervisors of the county of Racine, pursuant to law, did enact, ordain, and determine to, and thereupon did, fix and establish the boundaries of the towns of Racine, Caledonia, and Mount Pleasant, in the same manner as the same were respectively fixed by the act of the legislature of the State of Wisconsin, approved February 23rd, A. D. 1857, and being chapter sixty-eight of the private and local acts of that year, above referred to, and as the said boundaries are hereinbefore and at length set forth, and that said act of the legislature confirmed and established the limits and boundaries so fixed.

And this defendant further answering, upon information and belief alleges and avers, that a plat and record of the boundaries of

said towns as thus established, and a record of the proceedings of the board of supervisors of said county in reference thereto,
38 was duly made and kept by the clerk of such board pursuant to such act, and was duly published in the Racine Advocate, (a paper then published in the city of Racine, in said county) for three successive weeks, pursuant to said act.

And this defendant further answering alleges and avers, that no act, statute or law has ever been passed or enacted, which in any way authorizes the assessment, levy, or collection of any tax upon the taxable property of this defendant, the town of Mount Pleasant, or by or on the part of the municipal authorities or officers of this defendant, for the purpose of liquidating or paying the bonds mentioned in complainant's bill of complaint, or the interest-warrants attached or any part or portion thereof; or wherein or whereby this defendant has been or may be authorized or empowered to answer or pay any indebtedness of said town of Racine or Orwell, or wherein or whereby this defendant has or may become proprietor of or invested with the stock or any portion thereof, in exchange for which said bonds are claimed to have been issued, or wherein or whereby this defendant might or could hold the same in pledge or upon trust, or whereby this defendant should become the successor in interest to the said corporation which is alleged to have issued said bonds.

39 And this defendant further answering avers and alleges, that this defendant has never assumed or undertaken by any act on its part any trust or duty in the premises, and has never taken any step or action recognizing the acts of said town of Racine in the premises, or whereby they might hold or claim to hold said stock, and has never by any act on its part assumed, admitted, or recognized said bonds or interest-warrants in said bill of complaint mentioned, or the validity thereof.

And this defendant further answering alleges and avers, that the first coupon or interest-warrant originally attached to and issued with each of the bonds mentioned in the complainant's bill of complaint, and exhibited thereto, to wit: the coupons which by their terms fell due on the tenth day of February, A. D. 1854, were by said the Racine, Janesville and Mississippi Railroad Company assumed and fully paid, and were cut and detached from said bonds.

And this defendant further answering alleges, that the matters hereinbefore alleged with respect to the acts and things had and done by or on the part of the said corporation, the town of Racine, are matters of record, contained and set forth in the records and proceedings of such town and its board of supervisors, from which the knowledge, information, and belief of this defendant in
40 that behalf is derived. And this defendant prays leave to submit and make such records and proceedings, together with the proceedings and records of this defendant and its supervisors in the premises, for greater certainty, part of this its answer, and to refer to the same, as it may be advised.

All which matters and things this defendant is at all times ready to aver, maintain, and prove, as this honorable court may direct.

Without this, that any other matter or thing in complainant's said bill of complaint stated, and not herein and hereby well and sufficiently answered, traversed, avoided, or denied, is true to the knowledge or belief of this defendant.

Wherefore this defendant prays judgment, to be hence dismissed, with its costs and charges in this behalf most wrongfully sustained.

THE TOWN OF MT. PLEASANT,
By JAMES O. BARTLETT,
Chairman of the Board of Supervisors of said Town.

FISH & LEE, *Solicitors for Defendant.*
L. S. DIXON, *of Counsel.*

EASTERN DISTRICT OF WISCONSIN, *ss.*

On this 24th day of April, A. D. 1875, before me personally came James O. Bartlett, who, being by me duly sworn, did depose and say, that he is chairman of the board of supervisors of the town of Mount Pleasant, in the county of Racine, the above-named corporation, which makes the foregoing answer. That he
41 has heard the said answer read, and knows the contents thereof, and that the same is true to his knowledge, except as to the matters which are therein stated upon the information and belief of the defendant, and as to those matters he believes it to be true.

CHARLES H. LEE,
United States Commissioner for the Eastern District of Wisconsin.

Answer of Town of Caledonia.

In the Circuit Court of the United States for the Eastern District of Wisconsin.

The answer of the town of Caledonia, defendant, to the bill of complaint exhibited in this court by Latham Cornell, complainant, against the town of Mount Pleasant, the city of Racine, and the town of Caledonia, defendants.

This defendant, now and at all times hereafter reserving to itself all and all manner of benefit and advantage of exception to the manifold errors and insufficiencies in the complainant's bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is material for it to make answer unto, answers and says:

That by an act of the legislature of the State of Wisconsin, entitled "An act to amend an act entitled 'An act to incorporate the city of Racine, in the county of Racine,' approved August 8,
42 1848, and all other acts amendatory thereto," approved March 6, 1856, and being chapter 83 of the Private and Local Acts of the State of Wisconsin for the year 1856, the following-de-

scribed territory, being part of the then territory of the town of Racine, were annexed to and constituted and became part of the city of Racine, to wit: the north half of section twenty-one (21), the northeast quarter of section number twenty (20), the east half of section number seventeen (17), the east half of section number eight (8), the southeast quarter of section number five (5), and the south half of fractional section number four (4).

And this defendant further answering says, that by an act of the legislature of the State of Wisconsin, entitled "An act to annex a part of the town of Racine to the town of Mount Pleasant, in the county of Racine," approved March 20, 1856, and being chapter 180 of the Private and Local Acts of the State of Wisconsin for the year 1856, all of the following-described territory, being part of the then town of Racine, were annexed to and constituted and became part of the town of Mount Pleasant, in said county of Racine, to wit: "All of fractional township three, range twenty-three east, lying south of the south line of the north half of sections five and six, without the limits of the city of Racine."

43 And this defendant further answering says, that by an act of the legislature of the State of Wisconsin, entitled "An act to change the boundaries of the towns of Racine, Caledonia, and Mount Pleasant, in the county of Racine," approved February 23, 1857, and being chapter 68 of the Private and Local Acts of the State of Wisconsin for the year 1857, the boundaries of the towns of Racine, Caledonia, and Mount Pleasant were so altered that each of said towns should include within its limits and consist of the following territory in the county of Racine, viz:

The town of Caledonia shall include all that territory in said county east of the west line of range No. twenty-two (22) east, which lies between the north line of said county and line running from the southwest corner of section nineteen (19), in township No. four (4), north of range No. twenty-two (22) east, eastwardly on the section line to the east line of said county."

The town of Racine shall include all that territory in said county east of the west line of said range No. twenty-two (22), which lies south of a line running eastwardly from the southwest corner of said section No. 19, on the section line, to the east line of said county, and north of a line running from the southwest corner of section No. 7 in township No. three, north of said range No. 22 east, eastwardly on the section line to the east line of said county,

44 excepting therefrom all the territory within said limits, now included in the city of Racine."

The town of Mount Pleasant shall include all the territory in said county east of the west line of said range No. 22 lying south of a line running from the southwest corner of section No. 7 aforesaid, eastwardly on the section line to the east line of said county and north of the south line of said county, excepting therefrom all of the territory within said limits, now included in the city of Racine."

And this defendant, for greater certainty, hereby refers to the said several acts hereunto before alleged, and prays that the same may be taken and considered as part of this answer to said bill of complaint.

And this defendant, further answering the said bill of complaint, alleges and avers the fact to be, that the railroad of the said Racine, Janesville & Mississippi railroad, in said bill of complaint mentioned, or if any successor of said company, never did and does not now run through nor is it located within the territory of this defendant, or within any territory of the towns of Racine or Orwald which has been annexed to the territory of this defendant, nor does it connect with any other railroad within said territory, and that said railroad is in fact distant eight miles from the nearest
45 point in the territory of this defendant.

And this defendant, further answering the said bill of complaint, alleges and avers that the said town of Orwell or Racine, as the same was constituted prior to the act of March 30, 1860, at the regular election held according to law in the month of April, 1859, duly elected three supervisors of said town to hold, and who, according to the laws of the State of Wisconsin then and now existing, held their office for the term of one year, and until their successors in office should be elected and qualified; that the supervisors of said town so elected were George Wustman, William Place, and Michael Gorman; that said supervisors duly qualified according to law and entered upon the discharge of their duties as such supervisors, and that no successors have ever been elected or qualified, and that of said supervisors one thereof, to wit, George Wustrum, still survives and resides within the county of Racine and within the territory comprised within the then town of Orwell or Racine; and this defendant is advised and believes, and so alleges the truth to be, that the said complainant hath an adequate remedy in the premises at common law by action against the said town of Orwell or Racine, and that this honorable court, sitting in equity, hath no jurisdiction of or right to entertain the said bill of complaint.

46 And this defendant further answering alleges and avers, that no act, statute, or law has ever been passed or enacted which in any way authorizes the assessments, levy, or collection of any tax upon the taxable property of this defendant, the town of Mount Pleasant, or by or on the part of the municipal authorities or officers of this defendant, for the purpose of liquidating or paying the bonds mentioned in complainant's bill of complaint, or the interest-warrants attached, or any part or portion thereof; or wherein or whereby this defendant has been or may be authorized or empowered to answer or pay any indebtedness of said town of Racine or Orwell, or wherein or whereby this defendant has or may become proprietor of or invested with the stock or any portion thereof in exchange for which said bonds are claimed to have been

issued, or wherein or whereby this defendant might or could hold the same in pledge or in trust, or whereby this defendant should become the successors in interest to the said corporation which is alleged to have issued said bonds.

And this defendant further answering avers and alleges, that this defendant has never assumed or undertaken by any act on its part any trust or duty in the premises, and has never taken any step or action recognizing the acts of said town of Racine in the
47 premises, or whereby they find, hold, or claim to hold said stock; and has never by any act on its part assumed, admitted, or recognized said bonds or interest-warrants in said bill of complaint mentioned, or the validity thereof.

And this defendant further answering alleges and avers, that the first coupon or interest-warrant originally attached to and issued with each of the bonds mentioned in the complainant's bill of complaint, and exhibited thereto, to wit: the coupons which by their terms fell due on the tenth day of February, A. D. 1854, were by said the Racine, Janesville and Mississippi Railroad Company assumed and fully paid, and were cut and detached from said bonds.

All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court may direct, without this, that any matter or thing in said bill of complaint stated and not herein well and sufficiently answered, traversed, or denied, is true to the knowledge or belief of this defendant.

Wherefore this defendant prays judgment that it may be hence dismissed with its costs and disbursement in this behalf most wrongfully sustained.

THE TOWN OF CALEDONIA,
By
48 *Chairman of the Board of Supervisors of said Town.*

JENKINS, ELLIOTT & WINKLER,
Solicitors for Defendant.
JAS. G. JENKINS, *of Counsel.*

Answer of City of Racine.

In the Circuit Court of the United States for the Eastern District of Wisconsin.

The answer of the city of Racine, defendant, to the bill of complaint exhibited by Latham Cornell, complainant, against the town of Mount Pleasant, the town of Caledonia, and the city of Racine, defendants.

This defendant, now and at all times hereafter saving and reserving to itself all and all manner of benefits and advantages of exception to the manifold errors and insufficiencies in the complainant's bill of complaint contained, for answer thereto or unto so

much and such parts thereof as this defendant is advised is material for it to make answer unto, answers and says:

That by an act of the legislature of the State of Wisconsin, entitled "An act to annex a part of the town of Racine to the town of Mount Pleasant, in the county of Racine," approved March 20, 1856, and being chapter 180 of the Private and Local Acts of the State of Wisconsin for the year 1856, all of the following described territory, being part of the then town of Racine, were annexed to and constituted and became part of the town of Mount Pleas-
49 ant, in said county of Racine, to wit: all of fractional township three, range twenty-three east, lying south of the south line of the north half of sections five and six, without the limits of the city of Racine; that in said act last named no provisions were made by the legislature of the State of Wisconsin apportioning any debt that the said town of Racine might then have been owing.

And this defendant further answering says, that by an act of the legislature of the State of Wisconsin, entitled "An act to change the boundaries of the town of Racine," approved February 23, 1857, and being chapter 68 of the Private and Local Laws of the State of Wisconsin for the year 1857, the boundaries of the towns of Racine, Caledonia, and Mount Pleasant were so altered that each of said towns should include within its limits and consist of the following territory in the county of Racine, viz:

The town of Calidonia should include all that territory in said county east of the west line of range No. twenty-two (22) east, which lies between the north line of said county and a line running from the southwest corner of section nineteen (19) in township four (4), north of range No. twenty, on the section line, to the east line of said county."

50 The town of Racine should include all that territory in said county east of the west line of said range No. twenty-two (22), which lies south of a line running easterly from the southwest corner of said section No. 19, on the section line, to the east line of said county and north of a line running from the southwest corner of section No. 7, in township No. three (3), north of said range No. twenty-two (22) east, eastwardly on the section line to the east line of said county, excepting therefrom all the territory within the limits now included in the city of Racine."

The town of Mount Pleasant shall include all the territory in said county east of the west line of said range No. twenty-two (22), lying south of a line running from the southwest corner of section No. seven (7), aforesaid, eastwardly on the section line to the east line of said county, and north of the south line of said county, excepting therefrom all of the territory within said limits now included in the city of Racine.

And this defendant, further answering the said bill of complaint, alleges and avers that the town of Orwell, or Racine, as the same was constituted prior to the act of March 30th, 1860, referred to in

the complainant's bill, to wit: at the regular election held according to law in the month of April, 1859, duly elected their
51 supervisors of said town to hold, and who, according to the laws of the State of Wisconsin then and now existing, held their office for the term of one year, and until their successors in office should be elected and qualified.

That the supervisors of said town so elected were Geo. Wustum, Michael Gorman, and William Place; that said supervisors duly qualified according to law and entered upon the discharge of their duties as such supervisors, and that no successors have ever been elected or qualified, and that of said supervisors one thereof, to wit, George Wustum, still survives and resides within the county of Racine, and within the territory composed within the town of Orwell or Racine.

And this defendant further answering alleges and avers, that by the act of the legislature of March 17th, 1871, private and local laws referred to in the complainant's bill, the territorial boundaries the complainant's bill alleged, but that the said city of Racine was only to assume and pay so much of the municipal indebtedness of the former town of Racine, if any, as the lands described in the first section of said act as may become legally chargeable with and liable to pay: *Provided*, that nothing in said act contained should be construed to recognize or confirm any such municipal indebted-
52 ness of said former town of Racine."

And this defendant, for greater certainty, hereby refers to the said several acts hereinbefore and alleged, and those referred to as in complainant's bill, and prays that the same may be taken and considered as part of this answer to said bill of complaint.

And this defendant is advised and believes, and so alleges the truth to be, that the said complainant hath an adequate remedy in the premises at common law, by action against the said town of Racine or Orwell, and that this honorable court sitting in equity hath no right or jurisdiction to entertain the said bill of complaint as against this defendant.

All of which matters and things this defendant is ready to aver and maintain and prove as this honorable court may direct, without this, that any matter or thing in said bill of complaint stated and not herein well and sufficiently traversed or denied, is true to the knowledge or belief of this defendant.

Wherefore this defendant prays judgment that it may be hence dismissed with its costs and disbursements in this behalf wrongfully sustained.

THE CITY OF RACINE,
By LUCIUS S. BLAKE,
President of the City Council of sd. City.

VAN BUSKIRK & RITCHIE,
Solicitors for Defendant.
S. B. VAN BUSKIRK, *of Counsel.*

53 UNITED STATES OF AMERICA, } ss.
EASTERN DISTRICT OF WISCONSIN. }

On the 28th day of April, 1875, before me personally came Lucius S. Blake, who, being by me duly sworn, did depose and say that he is president of the city council of the city of Racine, one of the above-named corporation defendants, and makes this verification on its behalf; that he has heard read the foregoing answer by him subscribed in behalf of this defendant, and knows the contents thereof, and that the same is true to his own knowledge, except as to those matters which are therein stated on information and belief of the defendant, and as to those matters he believes it to be true, and makes this verification on account of the absence of the mayor of said city.

CHARLES H. LEE,
United States Commissioner Eastern District Wisconsin.

Replication to Answer of Town of Mt. P.

May 3, 1875.—This day came the complainant by his solicitors, and filed his replication, as follows:

In the Circuit Court of the United States for the Eastern District of Wisconsin.

The replication of Latham Cornell, complainant, to the answer of the defendant, the town of Mount Pleasant.

This repliant, now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of
54 exception which may be had or taken to the manifold insufficiencies of the answer of the said defendant, the town of Mount Pleasant, for replication thereunto says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill of complaint he has already prayed.

FULLER & HARKNESS,
Solicitors for Complainant.

Replication to Answer of T. of Caledonia.

In the Circuit Court of the United States for the Eastern District of Wisconsin.

The replication of Latham Cornell, complainant, to the answer of the defendant, the town of Caledonia.

This repliant, now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of
55 exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, the town of Caledonia, for replication thereunto says that he will aver and maintain and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

FULLER & HARKNESS,
Solicitors for Complainant.

Replication to City of Racine's Answer.

In the Circuit Court of the United States for the Eastern District of Wisconsin.

The replication of Latham Cornell, complainant, to the answer of the defendant, the city of Racine.

This repliant, now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of
56 exception which may be had or taken to the manifold insufficiencies of the answer of the said defendant, for replication thereunto says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill of complaint he has already prayed.

FULLER & HARKNESS,
Solicitors for Complainant.

May 12, 1875.—This day came Charles H. Lee, Esq., a master of this court, to whom reference was made by stipulation of the parties thereto annexed, and filed his report, as follows:

Stipulation to take testimony annexed to Master's Report.

Circuit Court of the United States for the Eastern District of Wisconsin.

LATHAM CORNELL, COMPLAINANT,
vs.
THE TOWN OF MOUNT PLEASANT, the Town of Caledonia,
57 and the City of Racine, Defendants.

CHARLES BECKWITH, COMPLAINANT,
vs.
THE TOWN OF MOUNT PLEASANT, the Town of Caledonia, and the City of Racine, Defendants.

It is stipulated that the testimony in the above-entitled causes shall be taken before Charles H. Lee, Esq., of Racine, a master and examiner in chancery, and certified by him and reported to the court, and that the testimony so taken shall be read and used on the hearing of these causes, subject, however, to any legal objection made or taken to the competency of such testimony.

Dated April 30th, 1875.

FULLER & HARKNESS,
Solicitors for Complainants.
FISH & LEE,
Solicitors for Mt. Pleasant.
S. B. VAN BUSKIRK,
Solicitor for Racine City.
JENKINS, ELLIOTT & WINKLER,
Solicitors for Caledonia.

Master's Report.

UNITED STATES OF AMERICA.

In the Circuit Court of the United States for the Seventh Circuit and Eastern District of Wisconsin.

LATHAM CORNELL, COMPLAINANT,
against
THE TOWN OF MOUNT PLEASANT, THE Town of Caledonia, and the City of Racine, Defendants. } In Equity.

58 CHARLES BECKWITH, COMPLAINANT,
against
SAME DEFENDANTS.

To the judges of the Circuit Court of the United States for the Eastern District of Wisconsin.

In pursuance of a stipulation of the several parties by their solicitors in the above-mentioned suits, whereby the same are referred to me, as one of the masters and examiners of this court, to take and report the testimony and proofs therein, and having been attended at several times by counsel for the complainants and for the respective defendants, and having taken the proofs offered and adduced upon the several matters, as to which the said parties were advised to offer proof, I do hereby respectfully report:

That the respective parties have agreed upon the facts stated in the exhibit hereto annexed, consisting of six pages and marked Schedule "A," and each and all the several statements therein contained are admitted to be true as set forth; and it is further admitted that the several plats or drawings contained in such schedule are comparatively accurate and in all material respects correctly show the several changes and alterations in the territory and boundaries of the defendant towns.

That I have computed and ascertained as accurately as
59 possible the values of the real and personal property subject to taxation, comprised within the several tracts of territory hereinafter mentioned, the real estate being stated separately and the personal property by itself, at the several times and periods as stated in the accompanying schedules "B," "C," "D," "E," "F," and "G," hereto annexed. That I have also taken the testimony on behalf of complainants, which is comprised in schedule "H," and have ascertained the amount due upon the bonds and interest-warrants upon which said suits are founded and which are particularly mentioned in schedule "I," containing also a computation of the amount due thereon. I have also taken the testimony offered in behalf of defendants which is set forth and reported in the schedule "K," hereto annexed and herewith returned.

And I further report that in ascertaining the values of real estate mentioned in the accompanying schedules, I have had recourse to the assessment and tax rolls for the year set at the head of each of such schedules respectively, and have selected the necessary items from such rolls by means of the descriptions thereof, reference for aid being had to such maps and plats as were necessary and available for that purpose. That I have ascertained the values of personal property reported in said schedules in like manner, together
60 with the testimony of witnesses, as set forth in schedules "H," hereto attached.

That I have, in making up said schedules, wholly disregarded the act of 1856, which annexed certain territory to the city of Racine (to wit, chapter 83, Local Laws Wisconsin, 1856), conceiving that inasmuch as the same has been held inoperative and void by the Supreme Court of the State of Wisconsin, the same should not be deemed to have ever been of force. So much, therefore, of the

territory as said act purported to annex has been thrown back upon and included within the municipal divisions to which the same would at the time have belonged had said act not been passed.

And I further certify that each of the witnesses whose testimony appears in the subjoined schedules was, before testifying, duly and solemnly cautioned and sworn, and their testimony by me correctly written down and read over to them in their presence, and by them respectively subscribed in my presence.

And I further certify that the bonds and interest-warrants mentioned in schedule "I" have been by me signed as master, &c., on the back thereof, and the title of the suit in which the same was offered is endorsed on the back of each bond, and the said bonds
61 and interest-warrants, together with this report, are now brought and delivered into court with my own hand, to abide the order thereof.

And I further certify that in the rolls for the year 1853, referred to in schedule "B," hereto annexed, the personal property and real estate are assessed and set down in the same place, and the items of personal property were, therefore, selected without the aid of testimony from the assessment and tax rolls for that year, selecting the same according to description.

Respectfully submitted and reported.

CHARLES H. LEE,
Master and Exr. in Chancery.

Dated Racine, May 12*th*, 1875.

"*Schedule A.*"

In the Circuit Court of the United States for the Eastern District of Wisconsin.

LATHAM CORNELL, COMPLAINANT,
vs.
THE TOWN OF MOUNT PLEASANT, the Town of Caledonia, and the City of Racine, Defendants.

CHARLES BECKWITH, COMPLAINANT,
vs.
THE TOWN OF MOUNT PLEASANT, the Town of Caledonia, and the City of Racine, Defendants.

62 Statement of facts agreed to in the foregoing causes, subject to all objections for immateriality by either party.

First. The legislature of the Territory of Wisconsin, by an act approved Jany. 2d, 1838, among other things established the towns of Racine and Mount Pleasant, and defined their respective boundaries. Plat No. 1 shows the town of Racine and the east part of the town of Mount Pleasant.

Second. The legislature of said territory, by an act approved Feby. 7th, 1842, among other things creates the town of Caledonia, being town. 4, range 22 E., and the same act (sec. 3) extends the town of Mount Pleasant east to the range line, between ranges 22 and 23 east, as shown by Plat 2.

[Here follows diagram, marked page 62.]

63 *Third.* The legislature of the State of Wisconsin, by an act approved August 8th, 1848, incorporated the defendant, the city of Racine, and defined its territorial limits to be comprised within fractional sections nine (9) and sixteen of fractional township three, range 23 east. Plat 3 shows the boundaries of the three defendants, and also of the town of Racine at the time the bonds were issued, Dec. 6, 1853.

Fourth. It is admitted that the town of Racine, on or about the 6th day of Decr., 1853, upon the consideration, in the manner, and under the circumstances alleged in the respective bills of complaint of the complainants, made and delivered its bonds, but the amount due to the complainants, respectively, is to be ascertained by a production of the bonds and coupons and a computation in court or before a master.

64 [Here follows diagram, marked page 64.]

Fifth. The legislature of the State of Wisconsin, in and by an act published as ch. 83 of the Local Laws of 1856, declared that certain territory (describing it) should be and thereby was added to the city of Racine. The description, in brief, was of just one half-section in width, on the three land sides of the city, as shown by Plat No. 4.

The Supreme Court of the State of Wisconsin, in the year 1861, in the case of *Slawson vs. The City of Racine*, reported in volume 13 of the Wisconsin Supreme Court Reports, page 398 et seq., adjudged the said act to be unconstitutional and void; and thereafter and until the year 1871, when a portion of the same

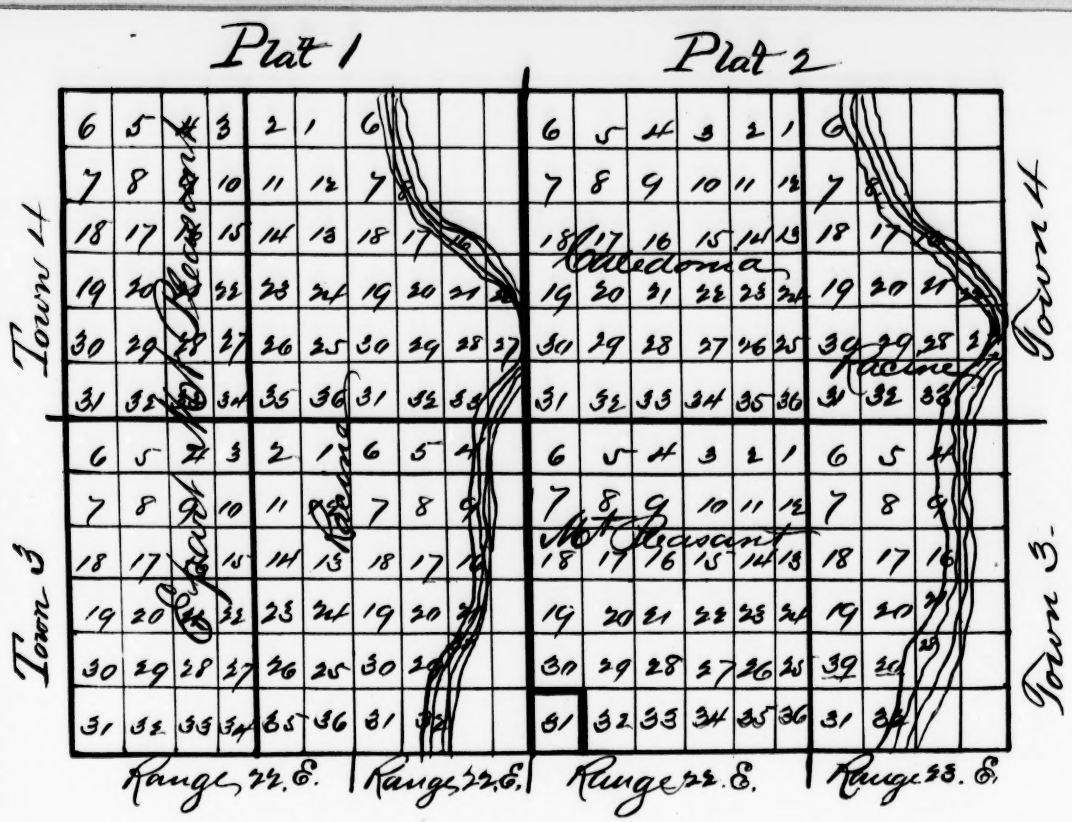
65 territory was annexed to the city, said city exercised no jurisdiction over said addition, and the towns of Mt. Pleasant and Racine did resume jurisdiction over the same.

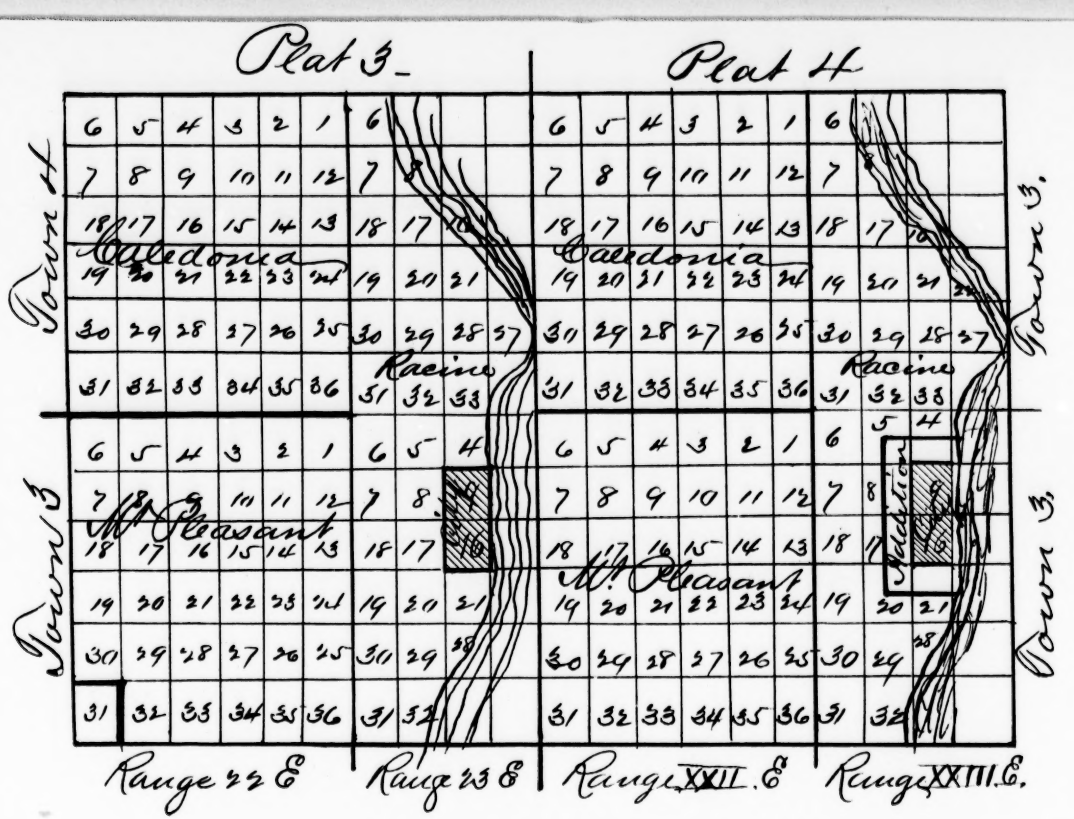
[Here follows diagram, marked page 65.]

Sixth. The legislature of Wisconsin, by an act published as ch. 180, Local Laws of 1856, and approved Mch. 20th, 1856, changed the boundaries of the towns of Racine and Mt. Pleasant, and defined the same as shown by *Plat* 5. The dotted line represents the addition mentioned in 13th Wis., 398.

Seventh. The legislature of Wisconsin, by an act approved February 3d, 1857, and published as chapter 68 of the local laws of that year, changed the boundaries of the three towns, Racine,

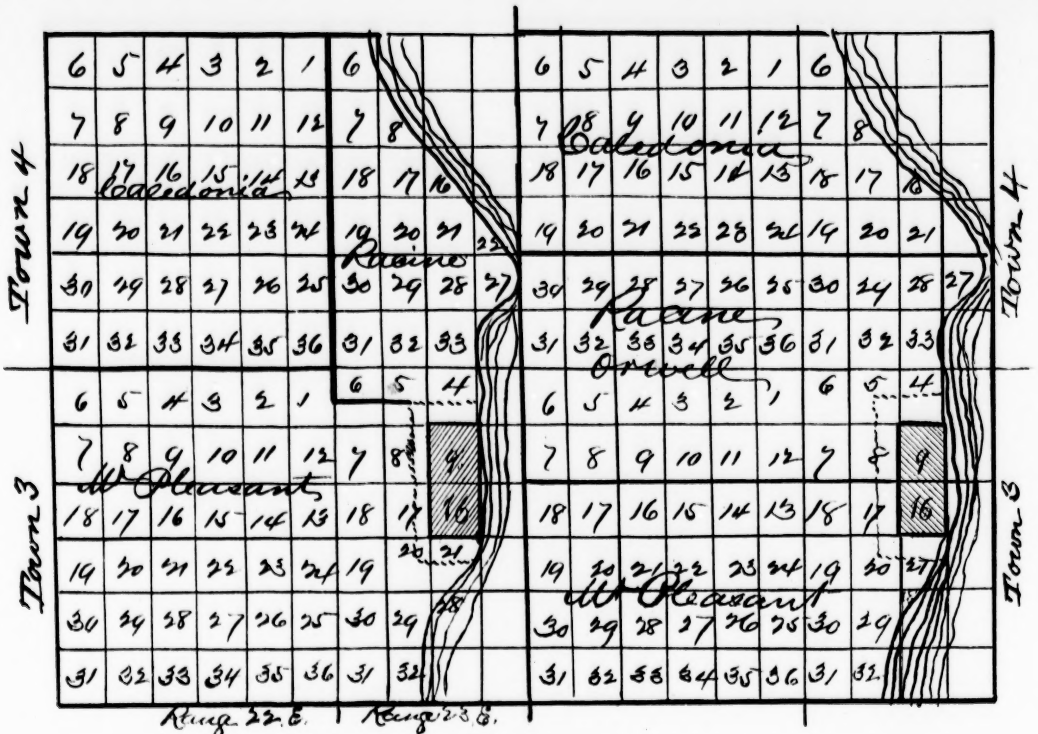
66 Mount Pleasant, and Caledonia, and established their boundaries as shown by *Plat No.* 6. The dotted line of the plat represents the addition adjudged void in 1861.


Plat 1
Plat 2
Town 4
Town 3
Mt Pleasant
Macedonia
Range 22. E.
Range 23. E.

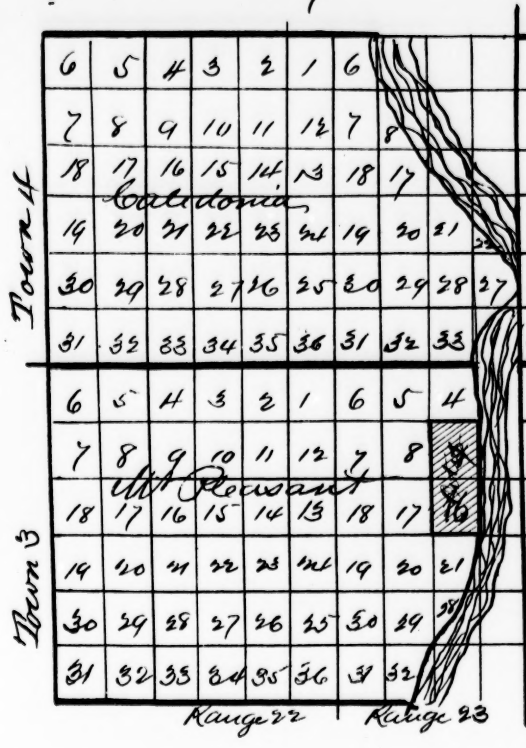

Plat 3
Plat 4
Caledonia
Racine
Caledonia
Racine
Addition
Mt. Pleasant
Mt. Pleasant
Town 4
Town 3
Town 4
Town 3
Range 22 E
Range 23 E
Range XXII E
Range XXIII E

Plat 5

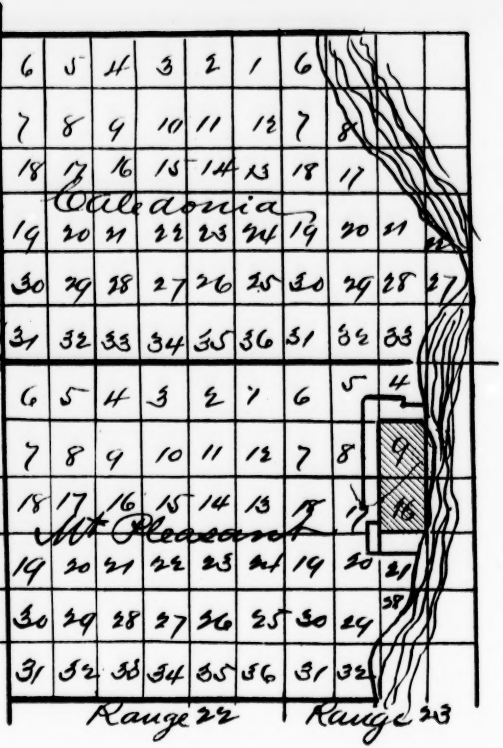
Plat 6.


Town 4
Caledonia
Racine
Town 3
Mt Pleasant
Range 22 E.
Range 23 E.
Town 4
Caledonia
Racine
Ontwell
Town 3
Mt Pleasant

Plat 7


Caledonia
Mt Pleasant
Town 4
Town 3
Range 22
Range 23

Plat 8


Caledonia
Mt Pleasant
Range 22
Range 23

It is also admitted and agreed that the board of county supervisors of the county of Racine, on or about the 26th day of November, 1856, by act or resolution of the board, changed the boundaries of said three towns, and fixed the boundaries of said towns respectively as the same are fixed by said ch. 68 of the Local Laws of 1857, above cited.

[Here follows diagram, marked page 66.]

Eighth. The county board of supervisors of the county of Racine, on or about the 2d day of Dec., 1859, changed the name of the town of Racine, in said county, to Orwell.

67 *Ninth.* The legislature of Wisconsin, by an act approved Mch. 30th, 1860, and published as ch. 242 of the General Laws of the year 1860, vacated the town of Orwell and attached all of its territory to the towns of Mount Pleasant and Caledonia, as shown by the Plat No. 7.

Tenth. The legislature of Wisconsin, by an act approved Mch. 17, 1871, published as chapter 348, Local Laws of 1871, made an addition to the city of Racine, particularly describing the same, and Plat No. 8 shows the same approximately.

Eleventh. The aforesaid acts of the legislature of the Territory and State of Wisconsin are rec'd in evidence, and may be referred to and read on the hearing, and are to control in preference to any thing herein stated not strictly in conformity to said acts.

Twelfth. That at the annual spring election, held in the month of April, 1859, in the town of Orwell, or Racine, as said town then existed, three supervisors for said town were elected; that they qualified and entered upon the discharge of their duties, and that no supervisors for said town have since been elected or qualified. That George Wustum, one of the supervisors so elected in April, 1859, and chairman thereof, is living, and resides within the territory then comprised in the town of Racine or Orwell.

Thirteenth. That the town of Racine did subscribe for and

68 receive fifty thousand dollars of the capital stock of the Racine, Janesville and Mississippi Railroad Company, as in the complainants' bills of complaint alleged, under and by virtue of the act authorizing such subscription and the issue of said bonds, and said act may be referred to and read in full at the hearing.

(Admission made in court.)

It is admitted that the towns of Mt. Pleasant and Caledonia, as corporations, never by any corporate act, moved the legislature for the passage of any of the laws changing any of the territorial boundaries above specified or referred to.

(CHARLES H. LEE, *Master in Chy., &c.*)

Plat 4.—Schedule "B," assessment of 1853. Value of real and personal estate, stated separately in town of Racine, Dec. 5–6, 1853,

(as such town was then constituted,) and in the several portions thereof required to be found, as follows:

Total value of real estate $143,078
" " personal estate 4,900

Of that portion of said town as it existed at the above date—now being within and part of the town of Caledonia:

Value of real estate $52,686
" personal estate 550

69 Of that portion thereof now within and part of town of Mt. Pleasant:

Value of real estate $78,420
" personal estate 4,350

Of that portion now within and part of the city of Racine:

Value of real estate $11,972
" personal estate ..... none.

Plat 3.
Plat 4.—Schedule "C," assessment of 1874.

Value of real and personal property stated separately, at the present time, in the territory which comprises the town of Racine as it existed Dec. 5–6, 1853:

Total value of real estate $832,591 50
" " personal estate 123,691

Plat 8.—Of that part now included in and forming part of town of Caledonia:

Value of real estate at this time $217,263 50
" personal estate at this time 24,811

Of that part now included in and forming part of town of Mt. Pleasant:

Value of real estate at this time $439,530
" personal estate at this time 58,820

Of that part, now being part of the city of Racine, having been annexed by act of 1871 (ch. 348 Local L. Wis. 1871):

70 Value of real estate at this time $175,798
" personal estate at this time 40,060

Plat 6.—Schedule "D," assessment of 1859. Value, March 30th, 1860, (at time legislature of Wisconsin extinguished town of Orwell,) of the parts of the town of Orwell, as theretofore constituted, taken by Caledonia and Mount Pleasant respectively.

Of the whole of said town of Orwell:

Value of real estate Mar. 30, 1860 ..... $696,024 05
" personal estate Mar. 30, 1860 37,925

Plat 7.—Of the above amounts there is taken by Caledonia (by virtue of act of Mar. 30th, 1860):

Real estate	$298,112
Personal property	15,168
And by Mount Pleasant:	
Real estate	$397,912 05
Personal property	22,757

The foregoing schedule disregards the act of 1856 (chapter 83, Local), referred to in the *seventh* proposition of schedule "A," and treats all the territory attempted to be annexed by that act to the city of Racine, as being part of the adjacent towns.

71 *Plat* 3.—Schedule "E," assessment of 1859. Value, Mar. 30th, 1860, of such parts of the town of Racine, as constituted Dec. 6th, 1853; and which, after the passage of the act of March 30th, 1860, (ch. 242, Local,) and by virtue thereof, formed parts of Mt. Pleasant and Caledonia respectively.

Of the whole territory of Racine town, as it existed Dec. 6, '53:

Value of real estate Mar. 30th, 1860	$591,874
" personal estate Mar. 30th, 1860	75,170
Of these amounts Caledonia received—	
Real estate from territory above described	$237,782
Personal estate from territory above described	3,419
Mount Pleasant received—	
Real estate from terry. above described	$354,092
Personal estate from terry. above described	71,751

The above schedule also disregards said act of 1856 and treats the territory sought to be annexed by said act as part of Mt. Pleasant.

Pl. 7 and 8.—Schedule "F," assessment of 1870. Value, March 17th, 1871, (at time of passage of chapter 348, Local,) of Mt. Pleasant, and the several portions thereof, directed to be found, as follows:

72

Total value of real estate in said town	$1,271,586
" " " personal prop'y "	180,300

Of these amounts there was in territory annexed to city of Racine, by said act:

Real estate, value Mar. 17th, 1871	$183,540
Personal property " "	45,360

Pl. 6 and 8.—Of these last amounts there was in that part of the territory so annexed, which on and prior to March 30th, 1860, was part of Orwell—

Real estate, value Mar. 17th, 1871	$111,580
Personal " " " " "	5,450

Leaving a balance, which was not part of Orwell and not taken therefrom by Mt. Pleasant, of—

Real estate, value March 17th, 1871	$71,960
Personal " " " "	39,910

Value, same time, of so much of Mt. Pleasant as was acquired from Orwell, exclusive of part added to city:

Real estate	$387,250
Personal propty	31,710

Pl. 6, 7, and 8.—Schedule "G," assessment of 1874.

Value, at this time, of property which was within the
73 town of Orwell, March 30th, 1860, prior to the act of that date vacating said town:

Total value of real estate	$829,671 41
" " " personal property	79,748

Of these values, there is now within the limits of Caledonia—

Real estate	$326,533 41
Personal "	34,893

And within the limits of Mt. Pleasant—

Real estate	$377,610
Personal "	35,470

And within limits of city of Racine—

Real estate	$125,528
Personal "	9,385

SCHEDULE "H." COMPLAINANT'S TESTIMONY.

Deposition of Samuel Steele.

Samuel Steele, being duly sworn as a witness for complainant, testifies as follows:

I live in the town of Mt. Pleasant, Racine county; I am 52 years of age; have resided within the limits of the present town twenty-eight years, and have been assessor of said town eleven years; I am acquainted with the residence and location of the property of the residents of said town of Mt. Pleasant, and of the residents of that part of such town which, in 1860, was part of Orwell or Ra-Racine; I have examined the assessment-rolls of Mt. Pleasant for the years 1859, 1870, and 1874, and of Racine or Orwell for
74 1859, and have selected the necessary items of personal property valuations therefrom, which enable me to state the following results, which I make part of my testimony, and which results are correct, to the best of my belief: I find from said rolls that the value of the personal property liable to assessment and taxation in Mt. Pleasant, and within that territory which, on the 6th day of December, 1853, was part of the town of Racine, is the sum of fifty-eight thousand eight hundred and twenty dollars, according

to valuations made in the year 1874; that the value of the personal property in the territory taken from Orwell by Mount Pleasant, by the act of 1860, including so much thereof as was attempted by the legislature, in 1856, to be annexed to city of Racine, is the sum of twenty-two thousand seven hundred fifty-seven dollars, according to valuations contained in the assessment and tax rolls of the year 1859. I find from examination of assessment and tax rolls for 1870, of the town of Mt. Pleasant, and from my knowledge of the territory comprised by said town, as then and now constituted respectively, and of the location of the inhabitants thereof, and the personal property therein, that the value of all personal property in said town, immediately prior to the addition to
75 the city of Racine, made in 1871, basing the same upon said rolls of 1870, was the sum of one hundred eighty thousand three hundred dollars; that of that amount the sum of forty-five thousand three hundred and sixty dollars was carried to the city by annexation made in 1871; that of this last amount the sum of five thousand four hundred and fifty dollars was the valuation of the personal property liable to assessment in that part of the territory so added to the city, which was part of the town of Orwell, in 1860, until extinguishment of that town, and the balance of the amount contained in the addition to the city, namely, thirty-nine thousand nine hundred and ten dollars, was not part of Orwell, and not acquired therefrom by the town of Mount Pleasant.

From the rolls of 1874 I find that the valuation of personal property now in Mt. Pleasant, which, in 1860, and while Orwell was in existence, belonged to that town, is the sum of thirty-five thousand four hundred and seventy dollars.

From said rolls for the year 1859, and from examinations of the city rolls for that year, so far as necessary to determine, I ascertain and state that the valuation of property (personal) which was included in that part of Mount Pleasant as now constituted,
76 which, in December, 1853, was part of then town of Racine, is the sum of seventy-one thousand seven hundred fifty-one dollars.

In these figures I have disregarded the act of 1856, making additions to city, and wherever necessary have consulted city tax-rolls for statistics as to personal property assessable within the territory which was attempted to be added by that act, and have added the items thereof, as selected, to the assessments of the town and the several parts thereof, making my figures and results the same as if that act were never passed. I have given these results to the best of my ability correctly, and I verily believe them to be substantially right. SAMUEL STEELE.

Deposition of E. C. Peck.

E. C. Peck, being duly sworn as a witness for complainants, testifies as follows:

I am thirty-seven years of age, and reside in the city of Racine. I am at present engaged in the business of making and furnishing abstracts of title to lands in Racine county. I have been county clerk of said county for two years last past past, and resided in Caledonia for about thirty years before coming to Racine. I am acquainted, and have been since 1858, with the location and property of the citizens and residents and property-holders of Caledo-
77 nia; have been chairman of its board of supervisors, and have assisted in making the town records from time to time. I have examined the assessment and tax rolls of that town and of the town of Orwell (so far as it relates to what is now part of Caledonia) for the years 1859, 1870, and 1874, and have made computations and calculations therefrom, at the instance of complainants, and state the following results as part of my testimony:

I find from tax-rolls of 1874 that the value of personal property in that part of Caledonia which was part of town of Racine Dec. 6th, 1853, is the sum of twenty-four thousand eight hundred eleven dollars.

I find find from rolls of 1859 of town of Racine or Orwell and of Caledonia, that the value of personal property which was assessable at that time, within that part of Caledonia as now constituted and which, in Dec., 1853, was part of town of Racine, as then constituted, to be three thousand four hundred nineteen dollars; and that the value of personal property in that part of Racine or Orwell taken therefrom by Caledonia in March, 1860, to be fifteen thousand one hundred sixty-eight dollars; and from the rolls of town of Caledonia for 1874, I find that the value of personal property in so much of said town as, in March, 1860, was part of
78 Orwell, is the sum of thirty-four thousand eight hundred ninety-three dollars.

I have given these results from the best of my ability, and believe them to be substantially correct.

ERASTUS C. PECK.

Deposition of Alanson Tiler.

Alanson Tiler, sworn as a witness for complainant, testifies:

I am 63 years of age, and reside in Racine. I have been assessor of the city of Racine three years, and a resident of Racine city and immediate vicinity for nearly forty years. I have examined the tax-rolls of said city for 1874, and have selected to the best of my ability the values of personal property therein which, in March, 1860, was part of Orwell, and find the amount thereof to be the sum of $9,385. Also the amt. of the personal property assessable in that part of said city which, in 1853, was part of the then town of Racine, and such amount is $40,060. These amounts are correct, to the best of my belief, and as nearly as I have been able to state them.

ALANSON TILER.

SCHEDULE "I." BONDS.

LATHAM CORNELL
vs.
TOWN OF MOUNT PLEASANT & AL.

79 Complainant offers in evidence certain bonds described in the bill of complaint herein, of which a printed copy of the form of such bonds is annexed, and marked "X." Such bonds so offered are eighty in number, and are numbered from one to sixty-nine inclusive, and from ninety to one hundred inclusive, and to each of such bonds, which are for five hundred dollars each, are attached coupons or interest-warrants due and payable on the tenth day of February in each year from the year 1858 to the year 1873, both inclusive, and complainant claims as now due the principal of each of said bonds and the amount of each of said interest-warrants, and interest upon the principal of each of said bonds from the tenth day of February, A. D. 1873.

CHARLES BECKWITH
vs.
SAME DEFENDANTS.

Complainant offers in evidence certain bonds mentioned in his bill of complaint, substantially and in all respects similar in form to said exhibit "X," save that the coupon or interest-warrant payable on the tenth day of February, 1858, is detached from each of the bonds now offered. Said bonds are numbered from
80 seventy to eighty-nine inclusive, and are twenty in number, are for $500 each, and each of the interest-warrants which are attached, and which are for interest due on the tenth day of February in each year from 1859 to 1873, both inclusive, are for thirty-five dollars each.

Complainant also offers twenty interest-warrants, each due on the tenth day of February, 1858, for $35 each, and which purport to have originally accompanied said bonds, being respectively numbered so as to correspond therewith.

Upon each of these detached interest-warrants is an endorsement in the following words and figures: "$17.50 pd. 11th August, '57." And upon the end of interest warrant to bond No. 77 is the following:

"20 bonds, $17 $\frac{50}{100}$ each."

Such interest-warrants are attached together, and all the foregoing facts will more fully appear from inspection of such bonds and interest-warrants, which I herewith return with my signature thereon, and make the same part of this report and schedule.

I also make and report the following computation of amounts due upon said bonds to the date of this report:

81 LATHAM CORNELL, COMPLAINANT,
against
THE TOWN OF MT. PLEASANT AND AL., DEFENDANTS.

Bond No. 1.—Principal	$500 00
16 coupons @ $35	560 00
Int. on bond from Feby. 10th, 1873, to May 12th, 1875, 2 y., 3 m., 2 d	78 95
Total	$1,138 95

Eighty bonds of same tenor and amount, upon each of which there is due the above amount, $1,138.95×80 is $91,116.00, which is the amount due at the date of this report.

CHARLES BECKWITH
against
SAME DEFTS.

Twenty bonds of same tenor and amount, except that the coupon of Feby. 10, 1858, is detached, and has endorsed a payment of $17 $\frac{50}{100}$.

Amt. due on each bond and 15 coupons	$1,103 95
Add amt. due on detached coupon	17 50
	$1,121 45

$1,121.45×20 is $22,429.00, which is the amount due at the date of this report.

82 By special authority of the State Legislature.

United States of America,

Town of Racine.—State of Wisconsin.

"X." No. 1 @ 100. $500.

The town of Racine acknowledge themselves to owe the Racine, Janesville & Mississippi Railroad Company the sum of five hundred dollars for five shares of one hundred dollars each in the capital stock of said company, subscribed for and purchased of said company by said town, which sum said town promise to pay to said company, or to the holder hereof, at their office in the city of New York, on the tenth day of February, 1873, and also interest thereon at the rate of seven per centum per annum, payable annually on the tenth day of each February ensuing the date hereof, until the said principal sum shall be paid, on presentation of the annexed interest-warrants at said office.

And it is further agreed that this obligation and all rights and benefits arising therefrom may be transferred by general or special endorsement or by delivery, as if the same were a note of hand payable to bearer.

In testimony whereof, the board of supervisors of said town have caused to be affixed its corporate seal and these presents to be subscribed by their chairman and attested by the clerk thereof, this 6th day of December, 1853.

[SEAL.]

Attest, JAS. MOTT TITUS. STEPHEN N. IVES, *Chairman.*
JAS. MOTT TITUS, *Clerk.*

I, J. Mott Titus, clerk of the town of Racine, do hereby certify that the foregoing obligation is issued in pursuance of a special act of the legislature of the State of Wisconsin, entitled "An act to authorize certain towns to aid in the construction of the Racine, Janesville & Mississippi railroad, approved April 2, 1853," and sanctioned by a majority of the legal voters of said town at an election duly held for such purpose December 5, 1853.

JAS. MOTT TITUS, *Clerk.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1873, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1872, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1871, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1870, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1869, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on pre-

sentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1868, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1867, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1866, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the *Bond* of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1865, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1864, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1863, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1862, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1861, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1860, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1859, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

$35.00. The town of Racine will pay thirty-five dollars on the 10th day of February, 1858, at the office of the Racine, Janesville & Mississippi Railroad Company in the city of New York on presentation hereof, being the interest due that day on the bond of said town number issued to said company.

By order of the Board of Supervisors.

A. H. VAN VALKENBERG, *Treasurer.*

[Across the face of Feb., 1858, coupon.] This coupon detached from each of Beckwith bonds. C. H. Lee.

(On back of Feb., 1858, coupon.) $17.50, as entered on each of coupons like this, detached from Beckwith's bonds. C. H. Lee, Examiner.

83 SCHEDULE "K." TESTIMONY FOR DEFTS.

Deposition of William C. Allen.

William C. Allen, being duly sworn as a witness for defendants, Mt. Pleasant and Caledonia and city of Racine, testifies as follows:

Q. State your name, age, occupation and residence.

A. My name is William C. Allen. I am sixty-one years of age, reside at Racine, Wisconsin, and my occupation, when engaged in business, is lawyer.

Q. Were you acquainted with the corporation known as the Racine, Janesville & Mississippi Railroad Company?

A. I was.

Q. Were you a director? If yea, how long?

A. I was a director, elected upon the first organization of the Co.; was a commissioner or corporator in the act of incorporation, and continued a director until the deed of surrender to the trustees of the bondholders, in 1859. I don't know but I am a director yet.

Q. Had you knowledge of the value or estimation in which the stock of that Co. was held from 1853 to 1856?

A. I had.

Q. What was its value during that period?

(Complainants' counsel objects, as immaterial.)

84 A. I can state how it was held. It was held by the Co. at par or nearly so. I can't state what the value of the stock was then, but can state how it was held by the Co. It was held by the Co. in 1855 or 1856 at par or nearly so. I don't know of any sales as late as 1856 for less than 75 per cent. of par value, as it occurs to me now.

Q. Did you know or hear of any sales of that stock, at or about the year 1856, for that price, or near that price?

(Same objection by compts' counsel.)

A. I never heard of the stock being put upon the market. There were trades and sales made of the stock about that time, between individuals, of which I heard or had knowledge; knew of a transaction in lands, where the lands were put in at cash value, and the stock traded for the lands at par. Think this was about January, 1855. This exchange was made by the Co. issuing stock for lands. Mr. Marshall M. Strong sold some stock of his own to William Grovenor, of New York, as I learned from both the parties, for 75 per cent. of par value. I am inclined to think that sale took place in 1855, in or about August. Think the Co. exchanged stock for a farm in Carroll county, in spring of 1856. In all cases where the stock was traded for lands, stock was issued by the Co. in
85 payment for lands. Think stock was exchanged for some depot grounds.

My knowledge of the foregoing transactions was derived from being a director. Was not personally knowing to but one of the transfers above mentioned, namely, the lands in Carroll county.

(Complainants' counsel objected in due time to the above questions and testimony as incompetent.)

WM. C. ALLEN.

Deposition of O. C. Munroe.

Orlando C. Munroe, being duly sworn as a witness for defendants, testified as follows:

My name is Orlando C. Munroe; I am fifty-six years old, farmer by occupation, and reside in the town of Mount Pleasant. I have resided in that town since the spring of 1846.

Q. What knowledge of the business of said town, transacted at its town meetings from 1853 to this time, have you had?

(Complainants' counsel objects as immaterial and incompetent.)

A. I have either been town clerk or supervisor every year but one till last April, and have had a general knowledge of the business and transactions of the town.

Q. State whether or not any railroad stock or property
86 of any kind, belonging to the town of Racine in its corporate capacity, ever came to the custody of the officers of the town of Mount Pleasant.

(Objected to by complainant's counsel as immaterial, irrelevant, and incompetent, and as involving a conclusion of law.)

A. No, sir; nothing Not even the records of the old town.

ORLANDO C. MUNROE.

Admission.

Whereupon it is admitted (counsel for the respective parties being present) that the railway line of the Racine, Janesville & Mississippi R. R. Company, or its successors, or any line of railway connecting therewith, did not run through any part of the territory of the defendant, the town of Caledonia, as now constituted, at any time, or through or upon any territory now or at any time heretofore comprised within the limits of such town.

(But the admission is made subject to objection on the ground of materiality.)

Deposition of E. C. Peck.

Erastus C. Peck, being duly sworn as a witness for defts., towns of Mt. Pleasant and Caledonia and city of Racine, testifies as follows:

My name is Erastus C. Peck; I am thirty-seven years of age; I reside in Racine, and my occupation is furnishing abstracts
87 of title to lands in Racine co. I resided in Caledonia from 1841 to 1872, except about a year. Was chairman of the board of supervisors of the town of Caledonia for years 1871 and part of 1872.

Q. Did you have knowledge of the business of the town from 1859 to the present time?

(Compts.' counsel objects as immaterial and incompetent.)

A. I had a general knowledge—the same as any other resident, perhaps more than people generally.

Q. Are you familiar with the books and records of the town?

(Same objections by complainants' counsel.)

A. I have had access to them. I have examined them at different times as a citizen, and also when I was supervisor.

Q. State whether or not any railroad stock of the town of Racine, or property of any kind belonging to that town in its corporate capacity, ever came to the possession of the officers of the town of Caledonia.

(Objected to same as before.)

A. Not to my knowledge. During the summer of 1871 I made an examination of the records of that town for the purpose of ascertaining the facts whether or not they had ever received any property or stock from the town of Racine. I found nothing
88 upon the records relating to it.

(Complts.' counsel objects to all the foregoing answer except the first clause as not responsive to the question propounded.)

Q. Have you made examination of the records for the purpose of finding whether the town of Caledonia ever received any property or stock from the town of Racine?

(Objected to as immaterial and incompetent.)

A. I made examination as above stated for the purpose of ascertaining whether property of any nature had come from the corporation town of Racine to the town of Caledonia, and for the purpose of ascertaining all the facts in reference to the abolishing of the town of Racine and the cession of a portion thereof to Caledonia. I found nothing with reference thereto.

ERASTUS C. PECK.

Deposition of Thos. Dickinson.

Thomas Dickinson, being duly sworn as a witness for defendants, testifies as follows:

My name is Thomas Dickinson; I am 59 years of age; reside at Racine, Wisconsin, and I am Prest. of the Racine Gas-Light Co.

Q. Were you acquainted with the price of the stock of the Racine, Janesville & Mississippi Railroad Company between 1853 and 1860?

(Complts.' counsel objects as immaterial and incompetent.)

89 A. I bought some in 1854 or 1855—probably in 1855.

Q. Did you know of other transactions?

(Same objection.)

A. Not of actual buying, but I knew of exchanges.
Q. At what price did you buy?

(Same objection.)

A. I bought at $65 per share.
Q. Did you buy any at any other price?
A. I think not, for money.
Q. Did you pay cash for what you bought for 65?

(Objected to same as before.)

A. Yes, sir.

THOMAS DICKINSON.

Deposition of Charles Herrick.

Charles Herrick, duly sworn as a witness for defendants, testifies as follows:

My name is Charles Herrick; I am sixty years of age, and reside in Mt. Pleasant, near the limits of the city of Racine.

Q. Were you acquainted with the value of the stock of the Racine, Janesville and Miss. R. R. Company between 1853 and 1860? If so, state.

(Objected to by complts.' counsel, as immaterial and incompetent.)

A. I knew its exchangeable value. I exchanged some for other property at 50 per cent. of par value.

90 Q. Did you know of other transactions in this stock?

(Same objection.)

A. Yes; I sold some, but can't say for what or at what price. It was in exchange for lands.

Q. Did you hear of other transactions in this stock?

A. Yes; there were a good many transactions in this stock, of sale and exchange.

CHARLES HERRICK.

(The counsel for the several defendants objected in due season to all testimony and evidence offered in behalf of the complainants, and to every question eliciting the same, on the ground that the facts and allegations thereby sought to be proven are irrelevant and incompetent and not material, and if true create no liability on the part of these defendants. But it is conceded by said defendants, and by the complainant, that the several assessment rolls produced before the master herein may be taken to be evidence of value, without objection as to the sufficiency of the proof of value, if such evidence be held material or competent; and such objection is expressly made to apply to the schedule "A"

of agreed facts, in all respects the same as if such agreed
91 facts had been proven by testimony.)

End of the foregoing schedules.

C. H. LEE *Master & Exr., &c.*

Hearing.

May 12, 1875.—This day came the parties by their counsel, and this cause came on to be heard upon the pleadings and proofs and the report of Charles H. Lee, Master, to whom reference was made, and was argued by the said counsel, and, being submitted, the court held the same under advisement.

Order of Reference to Master.

April 17, 1876.—This day came the complainant by his counsel, and on his motion it is ordered by the court that reference be and hereby is made to Charles H. Lee, Esqr., one of the masters of this court, to compute, ascertain, and report the amount due upon the bonds and interest-warrants mentioned in the bill, with interest to date of report; and also to ascertain and report the amount for which each of the defendants is justly liable.

April 18, 1876.—This day came Charles H. Lee, Esqr., the master to whom reference was made, and filed his supplementary report in this case, and in the case of Charles Beckwith against these defendants, as follows:

Supplementary Report of Master.

In the Circuit Court of the U. S., Eastern District Wisconsin.

92 LATHAM CORNELL
vs.
TOWN MT. PLEASANT & AL.

CHARLES BECKWITH
vs.
SAME.

It is hereby stipulated and agreed that the master's report of amount due and of the sums chargeable to and to be paid by each of the defendants in the respective suits above entitled, is made upon the motion and at the instance of complainants' solicitors, and that nothing either in said report or in the decree founded thereon shall be taken to be admitted, stipulated, or agreed to by the defendants, or either of them, and the fact that the master was also one of defendants' solicitors shall not be construed as in any way affecting the rights of defendants or as any admission upon their

To Caledonia
Racine or Orwell 1860
To Mount Pleasant
Town IV
Town III
Range XXII
Range XXIII
Racine
Lake Michigan
N

part of the correctness of the same, or the decrees thereon founded in point of law, or mode of distributing liability.

FULLER & HARKNESS,
Sols. for Complts.

93 [Here follows diagram, marked p. 93.]

94 In the Circuit Court of the United States for the Eastern District of Wisconsin.

LATHAM CORNELL, COMPLAINANT,
vs.
THE TOWN OF MOUNT PLEASANT, the Town of Caledonia, and the City of Racine, Defendants.

CHARLES BECKWITH, COMPLAINT.,
vs.
SAME DEFENDTS.

To the judges of the Circuit Court of the United States for the Eastern District of Wisconsin.

In pursuance of an order of this court referring the above-mentioned suits to the undersigned to compute, ascertain, and report the amounts due respectively upon the bonds and interest-warrants mentioned in the bill in each of said suits, with interest to day of report; and also to ascertain and report the amount for which each of said defendants is justly liable (having been also thereunto requested by the solicitors of the respective complainants), I do certify and report that at the day of the date hereof there is due upon the bonds and interest warrants held by said Latham Cornell, including interest, the sum of ninety-three thousand seven
95 hundred and twenty dollars and eighty cents; and upon the bonds and interest-warrants held by said Charles Beckwith there is due, at the day of the date hereof, the sum of twenty-three thousand and eighty dollars and twenty cents, including interest.

And I further certify that I have found and ascertained the amount which each of the defendants is justly liable to pay, in proportion to the amount of territory taken by each from the town of Orwell, or Racine, as the same existed just prior to its being extinguished in 1860, and I do find and report that in the suit of Latham Cornell the several defendants are liable to pay as follows:

The town of Caledonia the sum of forty-nine thousand three hundred twenty-two $\frac{17}{100}$ dollars, $49,322.17.

The town of Mt. Pleasant the sum of forty-two thousand four hundred sixty-seven $\frac{13}{100}$ dollars, $42,467.13.

And the city of Racine the sum of one thousand nine hundred thirty-one $\frac{50}{100}$ dollars, $1,931.50.

And in the suit of Charles Beckwith the several defendants are liable to pay as follows:

The town of Caledonia the sum of twelve thousand one hundred forty-six $\frac{70}{100}$ dollars, $12,146.70.

The town of Mt. Pleasant the sum of ten thousand four hundred fifty-seven $\frac{72}{100}$ dollars, $10,457.72.

96 And the city of Racine the sum of four hundred seventy-five $\frac{78}{100}$ dollars, $475.78.

And I further certify that the geographical distribution of territory held to be liable is shown by the annexed plat, exhibited to this report, and that my computations appear in certain schedules which are hereto affixed.

CHARLES H. LEE,
Master & Ex. in Chy.

APRIL 18*th*, 1876.

SCHEDULE "A." BONDS.

Cornell's Suit.

Principal, ea. bond	$500 00	
16 coupons, $35	560 00	
Int. on ea. bond, Feb. 10, '73, to Apr. 18, 1876, 7 per cent	111 51	
Due on each bond	$1,171 51	
Eighty bonds		$93,720 80

Beckwith's Suit.

Principal, ea. bond	$500 00	
15 coupons, $35	525 00	
Interest as above	111 51	
½ detach'd coupon due, ½ paid	17 50	
Due on each bond	$1,154 01	
Twenty bonds		$23,080 20
		$116,801 00

Cornell's Suit.

Caledonia pays $\frac{11951}{22709}+$		$49,322 17
Mt. Pleasant " $\frac{10290}{22709}+$		42,467 13
City Racine " $\frac{468}{22709}+$		1,931 50
	$93,720.80	

97 *Beckwith's Suit.*

Caledonia pays $\frac{11951}{22709}+$		12,146 70
Mt. Pleasant " $\frac{10290}{22709}+$		10,457 72
City Racine " $\frac{468}{22790}+$		475 78
	$23,080.20	
		$116,801 00

SCH. "B." TERRITORY.

Caledonia takes from Racine or Orwell, as follows:

Town. 4,	range 22,	sections 25 to 36*	.....	.....	.....	acres,	7,680
" 4,	" 23,	" 28 " 33*	.....	.....	.....		3,840
" "	" "	" fr. section 27	.....				408
" "	" "	" " " 34	.....				23

Total acres, 11,951.

* (Both inclusive.)

Mt. Pleasant takes fr. Racine or Orwell, as follows:

Town. 3,	range 22,	sections 1 to 12*	.....	.....	.....				7,680
" "	" 23,	" 6 and 7	.....	.....	.....				1,280
" "	" "	N. ½ section 5	.....	.....	.....				320
" "	" "	S.W. ¼ " 5	.....	.....	.....				160
" "	" "	W. ½ S.E. ¼ section 5	.....	.....	.....				80
" "	" "	N. ½ N. ½ S.E. ¼ and N. ½ of 4 †	.....	.....	.....				290
" "	" "	W. ½ section 8	.....	.....	.....				320
" "	" "	W. ½ E. ½ section 8	.....	.....	.....				160

Total acres, 10,290.

* (Both inclusive.) † (Section 4 is fractional, cont'g 518 acres. The shortage is proportioned between town and city.)

City of Racine takes fr. sd. town:

	E. ½ E. ½ of sec. 8, T. 3, R. 23	.....	.....	.....	.....	.....	.....		160
98	E. ½ S.E. ¼ " 5, " " " "	.....	.....	.....	.....	.....	.....		80
	S.E. ¼ (except 40 *a*) sec. 4, T. 3, R. 23 N.W. ¼, fractional, " 4, " " " "	† supra							228
Total acres, 468.									22,709

NOTE.—In making the foregoing computation each and every section of territory has been assumed to contain six hundred and forty acres, save only where the section was known to be substantially encroached upon by Lake Michigan. In such instances the approximate area of fractional sections has been ascertained by reference had to the recorded maps of the office of register of deeds of Racine county, and, in case of fractional section 4, the shortage has been equated, as near as may be, between the city and Mt. Pleasant.

Existing municipal boundaries are taken from the admitted facts contained in the former master's report in these suits.

CHARLES H. LEE.

And afterwards, to wit, at a stated term of said court begun and held according to law at the city of Milwaukee on the first Monday (being the third day) of January, A. D. 1876, and on the eighty-second day of said term, to wit, on the eighteenth day of April, A. D. 1876, the following proceedings were had, to wit:

Decree.

99 LATHAM CORNELL
vs.
THE TOWN OF MOUNT PLEASANT, the Town of Caledonia, and the City of Racine. } In equity.

This cause came on to be heard at the April term of this court, to wit, on the 12th day of May, A. D. 1875, upon the pleadings and proofs reported by the master, and, having been argued by counsel, the court took the same under advisement; and a further computation of the amount due to this date upon the bonds described in complainant's bill and exhibited in the proofs, having been directed, and made and filed by the master, bearing date the 18th day of April, 1876; and it satisfactorily appearing to the court that the town of Racine, a municipal corporation in the county of Racine in said eastern district of Wisconsin, and then having within its boundaries and municipal jurisdiction the territorial area described in the complainant's bill, on or about the 6th day of December, 1853, made, executed, and delivered the bonds described in the complainant's bill of complaint, upon the consideration; under the authority and in the manner, in said bill set forth, that the said town of Racine continued in existence as such municipal corporation, and by the same name, and with the changes in its
100 territorial boundaries set forth in the complainant's bill, until on or about the second day of November, 1859, when the county board of supervisors of Racine county, within which county said town of Racine was located, by a resolution of said board changed the name of said town from "The town of Racine" to "The town of Orwell," and that the township and municipal corporation theretofore known as the town of Racine remained in existence in and by the name of "The town of Orwell," and with the same territorial limits which the town of Racine had prior to such change of name, until on or about the 30th day of March, 1860, when the legislature of the State of Wisconsin, by an act published as chapter two hundred and forty-two, of the general laws of said state for the year 1860, and published and approved March 30th, 1860, vacated and extinguished the corporation and body politic known as the town of Orwell, in the county of Racine, and declared that said corporation should thereafter have no existence as a body politic and corporate.

That, in and by the same act of the legislature of said state, the whole territory of said town of Orwell, formerly known as the town of Racine, was attached to the defendants, the town of Mount Pleasant and the town of Caledonia, in the proportions and by the boundary-lines in said act named, and that no provision was
101 made, in or by said act, for the payment of the corporate debts of said township and body politic theretofore known by the

names of the town of Racine and the town of Orwell. And it further appearing to the court that, on or about the 17th day of March, 1871, by an act of the legislature of said State of Wisconsin, published as chapter three hundred and forty-eight of the local laws of said state for the year 1871, approved March 17th, and published March 18th, A. D. 1871, a portion of the lands and territory which had been within the town of Orwell at the time it was vacated, and which by the act vacating Orwell was attached to Mount Pleasant, was detached from the town of Mt. Pleasant, and attached to the defendant, the city of Racine, and in and by said act it was provided that the defendant, the city of Racine, should assume and pay so much of the municipal indebtedness of the former town of Racine, if any, as the lands described in the addition to said city might be or become legally chargeable with and liable to pay.

And it further appearing that the complainant, at the time of filing his said bill, was and now is the owner, in good faith and for value, of the bonds in the bill mentioned, and upon which there is due at this date the sum of ninety-three thousand seven hundred twenty and $\frac{80}{100}$ ($93,720\frac{80}{100}$) dollars.

102 Now, at the January term of this court, to wit, on the 18th day of April, 1876, the court being sufficiently advised, and being of the opinion that the municipal indebtedness of said town of Racine, otherwise known as the town of Orwell, was not extinguished by said act of the legislature vacating and disorganizing said township, and distributing its territory to the other townships and municipal corporations, and that an equitable liability for such indebtedness accrued against the defendants to which such territory was distributed, in the proportion which the taxable property received by each and the valuation thereof bore to the whole taxable property and the whole debt of such vacated town.

Now, therefore, it is considered, adjudged, and decreed, that the master's report of the amount due on the bonds set forth in complainant's bill, and of the respective proportions and valuations of the taxable property received by each of the defendants from said town of Orwell, or which belonged to said town immediately prior to the vacation thereof, be and the same is adopted, ratified, and confirmed.

And it is further adjudged and decreed, that the complainant, Latham Cornell, do have and recover of and from the defendants, the town of Mount Pleasant, the town of Caledonia, and the city of Racine, the sum of ninety-three thousand seven hundred

103 and twenty and $\frac{80}{100}$ ($93,720\frac{80}{100}$) dollars, hereby adjudged due to the complainant from the defendants, for principal and interest upon the bonds described in the complainant's bill, and which sum it is adjudged the complainant have and recover from the defendants severally, and that the defendants severally pay the same in the proportions and respective amounts following, to wit:

That the complainant, Latham Cornell, have and recover of and from the defendant, the town of Caledonia, the sum of forty thousand and three and $\frac{92}{100}$ (40,003$\frac{92}{100}$) dollars, and interest thereon from this date; and also the further sum of fifty-eight $\frac{37}{100}$ dollars, being one-third of complainant's costs and disbursements of the action, as taxed, and hereby adjudged to the complainant.

That the complainant, Latham Cornell, have and recover of and from the defendant, the town of Mount Pleasant, the sum of forty-one thousand nine hundred and ninety-six and $\frac{74}{100}$ dollars (41,996-$\frac{74}{100}$), and interest from this date; and also the further sum of fifty-eight $\frac{37}{100}$ dollars, being one-third of complainant's costs, as taxed.

And that the complainant, Latham Cornell, have and recover of and from the defendant, the city of Racine, the sum of eleven thousand seven hundred and twenty and $\frac{14}{100}$ (11,720$\frac{14}{100}$) dollars, and interest thereon from this date; and also the further
104 sum of fifty-eight $\frac{36}{100}$ dollars, being one-third of complainant's costs, taxed and adjudged to him as aforesaid.

And it is further adjudged that the complainant have execution against said defendants severally, to collect said several sums decreed to be paid by each, in the manner provided by law.

July 15, 1876.—This day came William W. Cornell and Latham C. Strong, as the executors of the last will and testament of Latham Cornell, deceased, by their solicitors, Messrs. Fuller & Winslow, and filed their bill of revivor against the defendants in this cause, as follows:

Bill of Revivor.

UNITED STATES OF AMERICA.

Circuit Court of the United States in and for the Eastern District of the State of Wisconsin. In chancery sitting.

WILLIAM W. CORNELL AND LATHAM C. STRONG, as the Executors of the last will and testament of Latham Cornell, deceased, Complainants, *against* THE TOWN OF MOUNT PLEASANT, THE TOWN OF Caledonia, and the City of Racine, Defendants. } Bill of Revivor.

To the judges of the Circuit Court of the United States for
105 the Eastern District of the State of Wisconsin.

The complainants, Wm. W. Cornell and Latham C. Strong, as the executors of the last will and testament of Latham Cornell, deceased, of the city of Troy, and citizens and residents of the State of New York, bring this their bill of revivor against the defendants, the town of Mount Pleasant, the town of Caledonia, and the city of Racine, each being corporations municipal, created and existing under and by virtue of the laws of the State of Wisconsin and, with-

in the meaning of the law, citizens and residents of the said State of Wisconsin, and within the said eastern district of the said State of Wisconsin.

And thereupon your orators complain, say, and allege, that Latham Cornell, late of the city of Troy, in the State of New York, but now deceased, on or about the first day of April, in the year of our Lord one thousand eight hundred and seventy-three, exhibited his original bill of complaint in this honorable court against the town of Mount Pleasant, the town of Caledonia, and the city of Racine, as the defendants thereto, for the purpose of establishing his demand and claim against, and recovering of and from the said defendants, the moneys, principal and interest, secured to be paid by certain bonds issued by and then outstanding against the town of Racine, and to be relieved touching certain matters and things stated and contained in such bill of complaint, as by the said bill now remaining of
106 record in this honorable court fully appears, and in and by such bill praying that the liability of each and all of the said defendants to pay the debt secured to be paid by the said bonds in said original bill named and described, should be ascertained and decreed by this court; that the amount due and owing to the said complainant, Latham Cornell, on the said bonds should also be ascertained and determined, and that the said defendants should be adjudged and decreed to pay to the said complainant, Latham Cornell, the amount, principal and interest, which might be by this honorable court found to be due and owing to the said complainant upon such bonds; that said several defendants and their respective officers be adjudged and decreed to take such necessary steps and proceedings as should be necessary to secure the payment to the said complainant of the sum found due and owing to him upon said bonds; that it might also be ascertained and determined by this court what territory and property of the said defendants are liable and obligated for the payment of the moneys secured to be paid by said bonds, and that the said complainant might have such other or further relief as might be equitable.

Your orators further show unto this honorable court, and allege that process was duly issued and served upon the said defendants and each of them; that the said defendants and each of them
107 appeared in said cause, and severally answered the said bill of complaint, to which answers and to each the said complainant, Latham Cornell, replied, and thereupon it was referred to a master in chancery for the purpose of taking testimony therein, and witnesses were examined and testimony taken in said cause on both sides, which was duly reported and filed in said cause by the said master in chancery, as by the said pleadings and other proceedings in said cause now remaining as of record in this honorable court, reference being thereunto had, will fully appear and to which your orators refer; that on the twelfth day of May, in the year of our Lord one thousand eight hundred and seventy-five, upon the said

pleadings and proofs, the said cause came on to be heard and was heard before the Honorable Thomas Drummond, Circuit Judge, and then by him taken and held under advisement until about the thirteenth day of April, A. D. 1876, at which time this court declared its opinion and announced its decision upon the matters of fact and questions of law involved in said cause, and ordered and directed a decree to be entered in said cause pursuant to, and in accordance with such opinion and decision, and thereupon, and on the 18th day of April, A. D. 1876, in the said January term of this court, and on the day after the death of the said Latham
108 Cornell, hereinafter stated, a decree was entered in favor of the said complainant, Latham Cornell, and against the said defendants, wherein and whereby it was in substance considered, adjudged, and decreed, that the master's report of the amount due on the bonds set forth and described in the said original bill of complaint, and the respective proportions and valuations of the taxable property received by each of the said defendants from the town of Orwell, should be and was adopted, ratified, and confirmed; that the said complainant, Latham Cornell, should have and recover of and from the said defendants the sum of ninety-three thousand seven hundred and twenty dollars and eighty cents ($93,720\frac{80}{100}$), adjudged due to the said complainant from the said defendants for principal and interest upon the bonds described in the said original bill of complainant, and that the said complainant, Latham Cornell, have and recover said sum from the said defendants severally, and that the said defendants severally pay such sum in the proportions and respective amounts following, to wit: that the complainant, Latham Cornell, have and recover of and from the defendant, the town of Caledonia, the sum of $40,003\frac{95}{100}$, and interest thereon from said 18th day of April, 1876, also the further sum of $58\frac{37}{100}$, being one-third of the complainant's costs and disbursements
109 of said suit as taxed; that the complainant, Latham Cornell, have and recover of and from the defendant, the town of Mount Pleasant, the sum of $41,996\frac{74}{100}$, and interest thereon from said last date, and also the further sum of $58\frac{37}{100}$, that being one-third of the complainant's costs and disbursements in said suit as taxed; and that the complainant, Latham Cornell, have and recover of and from the defendant, the city of Racine, the sum of $11,720\frac{14}{100}$, and interest thereon from the said last-named day, and also the further sum of $58\frac{36}{100}$, that being one-third of the complainant's costs and disbursements in said cause as taxed; and that the said complainant have execution against the said defendants severally to collect said several sums decreed to be paid by each, in the manner provided by law, as by the said decree now remaining as of record in this honorable court, reference being thereto had, fully appears.

Your orators further show unto this honorable court, and allege that the said complainant, Latham Cornell, on the seventeenth (17)

day of April, A. D. 1876, the day on which this honorable court announced its opinion and decision, and the day before the formal entry of the said decree in said cause, departed this life, having first duly made, executed, and published his last will and testament in writing, and therein and thereby appointed your orators,
110 William W. Cornell and Latham C. Strong, executors thereof; that since the death of the said Latham Cornell your orators have caused to be duly proven and admitted to probate the said last will and testament of the said Latham Cornell, deceased, before the Honorable Moses Warren, surrogate of Rensselaer county in the State of New York, being the surrogate before whom the same was properly provable, and that on the third (3d) day of June, A. D. 1876, letters testamentary upon the said will thus proven and admitted to probate were duly issued to your orators by the said surrogate; that your orators have accepted the appointment and position of executors of the last will and testament of the said Latham Cornell, deceased, and have duly qualified as such executors and have entered upon the discharge of the duties and trusts thereby created and imposed, and are now acting as such executors, and thereby your orators have become and now are the legal personal representatives of the said complainant, Latham Cornell, deceased.

Your orators further say and allege that at the time the said decree was formally entered in said cause, to wit, on the 18th day of April, A. D. 1876, Messrs. Fuller & Harkness, of the city of Racine in the said State of Wisconsin, were the attorneys and solicitors in said cause for the said complainant, Latham Cornell, now
111 deceased, and that neither of them at that time had any knowledge or information of the death of the said Latham Cornell, and were not informed of such death until sometime in the month of May, A. D. 1876; that the said cause, by the death of the said complainant, Latham Cornell, has become abated, and that your orators, as the personal representatives of the said Latham Cornell, now deceased, are entitled to have the said cause and proceedings revived in their favor and against the said defendants, the town of Mount Pleasant, the town of Caledonia, and the city of Racine, and to have such cause and proceedings restored and put in the same state and condition as the same were in immediately previous to the death of the said Latham Cornell, and that your orators are entitled to be made and become parties complainant in said cause, and as such are entitled to prosecute the said cause against the said defendants and to have the same relief against them as the said Latham Cornell, now deceased, would have been entitled to if he were still living.

Wherefore your orators pray that the said cause and proceedings so abated as aforesaid may be restored and stand revived in favor of your orators as the executors of Latham Cornell, deceased, and against the said defendants, the town of Mount Pleasant,
112 the town of Caledonia, and the city of Racine, and be in the

same plight and condition in which they were at the time of the death of the said Latham Cornell, or that the said defendants may show cause to the contrary; that your orators, as executors as aforesaid, may be made parties complainant in said cause, and that it may be continued and prosecuted in the name of your orators, as the executors as aforesaid; that the said decree heretofore in form entered in said cause on the day after the death of the said Latham Cornell may be so modified and changed so that your orators, as executors as aforesaid, may be named as complainants therein in the place and stead of the said Latham Cornell; and that your orators may have such further relief, or may have such other relief as the nature of the case shall require and as shall be agreeable to equity.

May it please this honorable court to grant unto your orators the writ of subpœna to revive and answer, issuing out of and under the seal of this court, to be directed to the said defendants, the town of Mount Pleasant, the town of Caledonia, and the city of Racine, therein and thereby commanding them, and each of them, at a certain day, and under a certain penalty therein to be inserted, personally to be and appear in this honorable court, then and there to answer the premises, and to show cause, if they can, why
113 the said cause, and the proceedings therein had, should not stand and be revived in favor of your orators as executors and against them, the said defendants, and be in the same plight and condition as the same were at the time of the abatement thereof, and further to stand to and abide such order and decree in the premises as to this court shall seem meet.

And your orators shall ever pray, &c.

WILLIAM W. CORNELL,
LATHAM C. STRONG,
Executors of Latham Cornell, Decd.,
By HENRY T. FULLER,
Their Attorney in fact.

FULLER & WINSLOW,
Solrs. for Complainants and of Counsel, Racine, Wisconsin.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF WISCONSIN. } *ss.*

Henry T. Fuller, being duly sworn, says he resides in the city of Racine, in said eastern district of Wisconsin; that he is the attorney in fact of William W. Cornell and Latham C. Strong, as the executors of the last will and testament of Latham Cornell, deceased, late of the city of Troy, in the State of New York; that the said William W. Cornell and Latham C. Strong are residents of the city of Troy, and citizens of the State of New York, and not now within the State of Wisconsin; that for and during ten years immediately prior to the death of the said Latham Cornell, he, this

deponent, acted as his attorney in the transaction of his busi-
114 ness in the State of Wisconsin; that as such attorney he commenced the suit named and described in the above and foregoing bill of revivor; that from information and knowledge obtained by the transaction of the business of the said Latham Cornell, now deceased, in his lifetime, and the business of the said executors, in the said State of Wisconsin, and from a certified copy of the letters testamentary issued to the said executors, he, this deponent, is familiar with and knows the facts, allegations, and circumstances stated in the above and foregoing bill of revivor, and upon such information and knowledge he, this deponent, make this affidavit for and on behalf of the said executors, complainants in said bill of revivor named; that he has read the above and foregoing bill of revivor and knows the contents thereof, and that the same is true of his own knowledge, derived as aforesaid, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

HENRY T. FULLER.

Subscribed and sworn to, this 15th day of July, A. D. 1876, before me. EDWARD KURTZ, *Clerk.*

Whereupon a subpœna issued returnable the first Monday of August next, as follows:

115 UNITED STATES OF AMERICA, }
EASTERN DISTRICT OF WISCONSIN. }

The President of the United States of America, to the town of
[SEAL.] Mount Pleasant, the town of Caledonia, and the city of Racine, greeting:

You are hereby commanded, that you personally appear before the judges of the Circuit Court of the United States of America for the Eastern District of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of August next ensuing, at Milwaukee, to answer to a bill of revivor, exhibited against you in our said court, by William W. Cornell and Latham C. Strong, as the executors of the last will and testament of Latham Cornell, deceased, and show cause why the suit commenced by Latham Cornell, complainant, against you as defendants, should not be revived.

And to do further, and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said the town of Mount Pleasant, the town of Caledonia, and the city of Racine, if to be found in his district, and due return thereof make.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in

the said district, this fifteenth day of July, in the year of our Lord one thousand eight hundred and seventy-six, and of our Independence the one hundred and first.

EDWARD KURTZ, *Clerk.*

FULLER & WINSLOW, *Solicitors.*

It is ordered by our said court that the said the town of Mount Pleasant, the town of Caledonia, and the city of Racine, the defendants aforesaid, do enter their appearance in this suit in the clerk's office, on or before the day and time at which this subpœna is returnable as aforesaid; otherwise the bill filed may be taken as confessed.

116 *Return.*

Subpœna returned, "Served on the city of Racine by delivering personally to John G. Meacham, the mayor of said city, a true copy of the within subpœna, and by showing to him the original, this 18th day of July, 1876. Served on the town of Mount Pleasant by leaving a true copy of this subpœna with the clerk of said town, to wit, Geo. A. Foster, personally, and by showing him the original, this 18th day of July, 1876; and on the same day above written I served the within on the town of Caledonia by delivering personally to the clerk of said town, to wit, John Elias, a true copy, and by showing to him the original, this 18th day of July, 1876.

Fees, $13.20. C. S. HAMILTON, *Marshal,*
By F. SCHNEIDER, *Deputy.*

Appearance.

August 7, 1876.—This day came Messrs. Fish & Lee and filed their appearance as solicitors for the defendant, the town of Mount Pleasant, as follows:

Circuit Court of the United States for the Eastern District of Wisconsin.

WILLIAM W. CORNELL AND LATHAM C. STRONG, as Executors of the last will of Latham Cornell, deceased, Complainants,
vs.
THE TOWN OF MOUNT PLEASANT, THE TOWN OF Caledonia, and the City of Racine, Defendants.

117 The town of Mount Pleasant hereby enter their appearance in this, the above-entitled suit, as one of the defendants to the bill of revivor exhibited and filed in said court, and give notice that they appear by the undersigned as their solicitors.

FISH & LEE, *Racine, Solrs. for sd. Town.*

AUGT. 7, 1876.

August 8, 1876.—This day came Messrs. Jenkins, Elliott & Winkler and filed their appearance as solicitors for the defendant, the town of Caledonia, as follows:

United States Circuit Court, Eastern District of Wisconsin.

WILLIAM W. CORNELL AND LATHAM C. Strong, Executors of the last will of Latham Cornell, deceased,
against
THE TOWN OF MOUNT PLEASANT, THE Town of Caledonia, and the City of Racine.
} Notice of Appearance.

Sir: Please enter our appearance in this action for the town of Caledonia, one of the defendants.

Dated Milwaukee, August 8th, 1876.

Yours, &c., JENKINS, ELLIOTT & WINKLER,
Attorneys for Defendant, Town of Caledonia.

To EDWARD KURTZ, Esq., *Clerk.*

UNITED STATES OF AMERICA.

118 Circuit Court of the United States of America, Eastern District of the State of Wisconsin, in chancery sitting.

Order Reviving Cause.

WILLIAM W. CORNELL AND LATHAM C. STRONG, as Executors of the last will and testament of Latham Cornell, deceased, Complainants,
against
THE TOWN OF MT. PLEASANT, THE TOWN OF CALedonia, and the City of Racine, Defendants.

Before the Circuit Court of the United States of America, Eastern District of the State of Wisconsin, sitting as a court of chancery, October term, A. D. 1876, to wit, the 11th day of October, A. D. 1876.

It appearing to this court that Latham Cornell, on or about the first day of April, A. D. 1873, exhibited his original bill of complaint in this court against the town of Mt. Pleasant, the town of Caledonia, and the city of Racine as the defendants thereto; that the said defendants and each of them appeared in said cause and severally answered the said bill of complaint, to which answers the said complainant, Latham Cornell, replied, and thereupon the said cause, by the order of this court, was referred to a master in chancery for the purpose of taking testimony therein, and wit-
119 nesses were examined and testimony taken in said cause by the several parties complainant and defendant, which was duly reported and filed in said cause; that on or about the 12th

day of May, A. D. 1875, the said cause was brought to a hearing in said court, before the Honorable Thomas Drummond, circuit judge, and by him taken and held under advisement until about the 13th day of April, A. D. 1876, at which time this court declared its opinion and decision upon the issues therein involved, and thereupon and then and there ordered and directed a decree to be entered in said cause in favor of the said complainant, Latham Cornell, and against the said defendants, and thereupon, and on the 18th day of April, A. D. 1876, in the January term of said court of that year, a decree in form was made and formally entered in said cause in favor of said complainant, Latham Cornell, and against the said defendants: and it further appearing to this court that on the seventeenth (17) day of April, A. D. 1876, the day before the formal entry of the decree in said cause, the said complainant, Latham Cornell, departed this life, he having first duly made, executed, and published his last will and testament in writing, and therein and thereby appointed William W. Cornell and Latham C. Strong, the complainants in the above-entitled cause, executors of such last will and testament; that such will has heretofore been
120 duly proven and admitted to probate before the Hon. Moses Warren, the surrogate of Rensselaer county, in the State of New York, he being the surrogate before whom the same was properly provable; and that on the third day of June, A. D. 1876, letters testamentary upon said will thus proven and admitted to probate were duly issued to the said William W. Cornell and Latham C. Strong, who have heretofore, and on or about the said 3d day of June, A. D. 1876, accepted the appointment and position of executors of the said last will and testament of the said Latham Cornell, now deceased, and have duly qualified as such executors, and have entered upon the discharge of the duties and trusts thereby created, and are now acting as such executors, and that they, the said William W. Cornell and Latham C. Strong, are now the legal personal representatives of said complainant, Latham Cornell, now deceased.

And it further appearing to this court that the defendants, the town of Mount Pleasant, the town of Caledonia, and the city of Racine, and each of them, on the eighth day of July, A. D. 1876, were duly summoned to be and appear in this court and answer the bill of revivor filed in this court in the above-entitled cause, on or before the first Monday in August, A. D. 1876, and show cause why the cause named in said bill of revivor should not be
121 revived: and it further appearing that the said defendant, the town of Mt. Pleasant, on the seventh day of August, A. D. 1876, did, by Messrs Fish & Lee, its solicitors, enter its appearance in said above-entitled cause; and on the eighth day of August, A. D. 1876, the defendant, the town of Caledonia, by its solicitors, Messrs. Jenkins & Elliott, entered its appearance in the said above-entitled cause; and the defendant, the city of Racine, has not appeared in said court, but has made default: and it fur-

ther appearing to this court that neither of said defendants have answered, pleaded, or demurred to the bill of revivor filed in said cause, and have not shown cause why the said cause named and described in said bill of revivor should not be revived, and that the time for answering said bill of revivor and for showing cause why such cause should not be revived has elapsed, and they, the said defendants, having made default, and it appearing to this court that the complainants, William W. Cornell and Latham C. Strong, as executors of the last will and testament of Latham Cornell, deceased, complainants named in said bill of revivor, are entitled to the relief demanded and prayed for in such bill of revivor in this cause, and on motion of Fuller & Winslow, solicitors for the said complainants, it is ordered, adjudged, and decreed, and the
122 court now here doth order, adjudge, and decree that this suit and the cause of action named and described in the said bill of revivor, wherein Latham Cornell is named as complainant, and the town of Mount Pleasant, the town of Caledonia, and the city of Racine are named as defendants, is restored and revived in favor of and in the name of William W. Cornell and Latham C. Strong, as executors of the last will and testament of Latham Cornell, deceased, complainants, and against the said defendants, the town of Mount Pleasant, the town of Caledonia, and the city of Racine, and thus restored and revived the same shall be and stand in the same plight and condition as it was at the time of the death of the said complainant, Latham Cornell, and that the same hereafter may and shall proceed and be continued and prosecuted in the name of the said William W. Cornell and Latham C. Strong, as executors of the last will and testament of Latham Cornell, deceased, complainants, and against the said defendants, the town of Mount Pleasant, the town of Caledonia, and the city of Racine.

By the court. CHAS. E. DYER, *Judge.*

And now, at this same term, to wit, January term, A. D. 1877, and on the seventy-first day thereof, to wit, on the 27th day of March, A. D. 1877, the following proceedings were had, to wit:

123 *Final Decree.*

WILLIAM W. CORNELL AND LATHAM C. STRONG as Executors of the last will and testament of Latham Cornell, deceased, *vs.* THE TOWN OF MOUNT PLEASANT, THE TOWN OF Caledonia, and the City of Racine.	In Equity.

This cause having come on to be heard upon the pleadings, proofs, stipulations, reports, orders, and decree of revivor heretofore filed and entered therein, and counsel for the respective parties

having been heard, and it appearing to this court that heretofore, to wit, on the eighteenth (18th) day of April, A. D. 1876, a decree in form had been entered in favor of Latham Cornell, named as complainant in the original bill of complaint, and against the above-named defendants, and that the said Latham Cornell, the complainant named in the original bill of complaint, had departed this life on the seventeenth (17th) day of April, A. D. 1876, the day prior to the day on which such decree was entered, and for that reason such decree was improperly and irregularly entered, and that on the eleventh (11th) day of October, A. D. 1876, a decree was entered in this cause in favor of William W. Cornell
124 and Latham C. Strong, as executors of the last will and testament of the said Latham Cornell, deceased, complainants, and against the above-named defendants, reviving the said cause, wherein the said Latham Cornell, now deceased, was named in the said original bill of complaint as the complainant, and against the above-named defendants, in favor of the above-named complainants as the personal representatives of the said Latham Cornell, deceased, and against the said defendants.

It further appearing to this court that the town of Racine, a municipal corporation in the county of Racine in the State of Wisconsin, and then having within its boundaries and municipal jurisdiction the territorial area described in the original bill of complaint in this action, on or about the sixth (6th) day of December, A. D. 1853, made, executed, and delivered the bonds described in the bill of complaint in this action, upon the conditions, under the authority, and in the manner in said bill of complaint set forth and alleged; that the said the town of Racine continued in existence as such municipal corporation and by the same name and with the changes in its territorial boundaries set forth in the complainants' bill of complaint, until on or about the second (2d) day of November, A. D. 1859, when the county board of supervisors of Racine county,
125 within which county said town of Racine was located, by a resolution of said board changed the name of said town from "The Town of Racine" to "The Town of Orwell," and that the township and municipal corporation theretofore known as "The Town of Racine" remained in existence in and by the name of "The Town of Orwell," and with the same territorial limits which "The Town of Racine" had prior to such change of name, until on or about the thirtieth (30th) day of March, A. D. 1860, when the legislature of the State of Wisconsin, by an act published as chapter 242 of the general laws of said state for the year 1860, and approved and published March 30th, 1860, vacated and extinguished the corporation and body politic known as "The Town of Orwell," in the county of Racine, and declared that such corporation should thereafter have no existence as a body politic and corporate; that in and by the same act of the legislature of said state the whole territory of said town of Orwell, formerly known as "The Town of Ra-

cine," was attached to the defendants, the town of Mount Pleasant and the town of Caledonia, in the proportions and by boundary lines in said act named, and that no provisions were made in or by said act for the payment of the corporate debts of said township and body politic theretofore known by the name of "The Town of Racine" and "The Town of Orwell."

126 And it further appearing to the court that, on or about the seventeenth (17th) day of March, A. D. 1871, by an act of the legislature of the said State of Wisconsin, published as chapter 348 of the local laws of said state for the year A. D. 1871, approved March 17th, and published March 18th, A. D. 1871, a portion of the lands and territory which had been within the town of Orwell at the time it was vacated, and which, by the act vacating the town of Orwell, was attached to the town of Mount Pleasant, was detached from the town of Mount Pleasant and attached to the city of Racine, and in and by said act it was provided that the defendant, the city of Racine, should assume and pay so much of the municipal indebtedness of the former town of Racine, if any, as the land described in the addition to said city might be or become legally chargeable with and liable to pay.

And it further appearing that Latham Cornell, the complainant named in the bill of complaint, now deceased, in his lifetime and at the time of filing his said bill of complaint, and at the time of his death, was the owner and possessor, in good faith and for value, of the bonds in the bill of complaint mentioned and described, and that the complainants, William W. Cornell and Latham C. Strong, as executors of the last will and testament, and as the personal representatives of the said Latham Cornell, now deceased, are the

127 owners and holders of the said bonds in the said bill of complaint mentioned, and upon which now, at this date, there is due and unpaid the sum of ninety-six thousand three hundred and sixty-four ($96,364.00) dollars, principal and interest.

Now, at the January term of this court, to wit, the 27th day of March, A. D. 1877, the court being sufficiently advised, and being of the opinion that the municipal indebtedness of the said "The Town of Racine," otherwise known as "The Town of Orwell," was not extinguished by said act of the legislature of the said State of Wisconsin, vacating and disorganizing said township, and distributing its territory to other townships and municipal corporations, and that an equitable liability for such indebtedness accrued against the defendants, to which such territory was distributed and attached, in the proportion which the taxable property received and the valuation thereof bore to the whole taxable property and the whole debt of such vacated town.

Now, therefore, it is considered, adjudged, and decreed that the decree in form, which was improperly and irregularly entered in this cause on the 18th day of April, A. D. 1876, the day subsequent to the death of the said Latham Cornell, complainant named in the

bill of complaint, be, and the same hereby is, vacated and set aside; that the master's report of the evidence taken in this cause, and his report of the amount due and unpaid on the bonds set forth
128 in the bill of complaint, and of the respective proportions and valuations of the taxable property received by each defendant from said town of Orwell, or which belonged to said town immediately prior to the vacation thereof, be, and the same is hereby, adopted, ratified, and confirmed. And it is hereby further adjudged and decreed that the complainants, William W. Cornell and Latham C. Strong, as executors of the last will and testament of Latham Cornell, deceased, do have and recover of and from the defendants, the town of Mount Pleasant, the town of Caledonia, and the city of Racine, the sum of ninety-six thousand three hundred and sixty-four ($96,364.00) dollars, that being the amount stated in the stipulation on file in this cause, and that amount being hereby by this court adjudged due and unpaid to the said complainants from the said defendants for principal and interest upon the bonds described and set forth in the bill of complaint in this cause, and which sum it is hereby adjudged and decreed the said complainants do have and recover of and from the said defendants severally, and that the said defendants severally pay the same in proportions and respective amounts following, to wit: that the complainants, William W. Cornell and Latham C. Strong, as executors of the last will and testament of Latham Cornell, deceased, do have and recover of and from the defendant, the town of Mount Pleasant, the sum of forty-three thousand one hundred and seventy-two
129 ($43,172) dollars and thirty-one (31) cents and interest thereon from this date, and also the further sum of sixty-eight dollars and fifty cents, being one-third of complainants' costs and disbursements in this action, as taxed and hereby adjudged to the complainants; that the said complainants do have and recover of and from the said defendant, the town of Caledonia, the sum of forty-one thousand one hundred and thirty-two ($41,132) dollars and seventeen (17) cents and interest from this date, and also the further sum of sixty-eight dollars and fifty cents, being one-third of the complainants' costs and disbursements as taxed and hereby adjudged to the said complainants; and that the said complainants do have and recover of and from the said defendant, the city of Racine, the sum of twelve thousand and fifty-nine ($12,059) dollars and fifty-two (52) cents and interest thereon from the date hereof, and also the further sum of sixty-eight dollars and fifty cents, being one-third of the said complainants' costs and disbursements in this action, as taxed and adjudged to them as aforesaid.

And it is further adjudged and decreed that the complainants have execution against the said defendants, severally, to collect the said several sums ordered and decreed to be paid by each, in the manner provided by law.

130 Decree signed, recorded, and enrolled, March 27th, 1877.

EDWARD KURTZ, *Clerk.*

July 23, 1877.—This day came the defendants, the town of Mount Pleasant and the town of Caledonia, by their solicitors, and prayed an appeal to the Supreme Court of the United States, and filed the bond of O. C. Munroe, Joseph Fuhrman, and James Callam, in the sum of five hundred dollars, conditioned that said defendants shall prosecute said appeal to effect and answer all damages and costs if they fail to make their appeal good, which bond is approved by the district judge, and is as follows:

Appeal Bond.

Know all men by these presents, that we, O. C. Munroe, of Racine, Wisconsin, and Jos. Fuhrman and James Callan, of Thompsonville, Racine co., Wisconsin, are held and firmly bound unto William W. Cornell and Latham C. Strong, as executors of the last will, &c., of Latham Cornell, deceased, in the full and just sum of five hundred dollars, to be paid to the said William W. Cornell and Latham C. Strong as such executors, or their certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 21 day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

131 Whereas, lately, at a term of the Circuit Court of the United States for the Eastern District of Wisconsin, in equity, in a suit depending in said court between William W. Cornell and Latham C. Strong, as executors of the last will, &c., of Latham Cornell, deceased, complainants, and the town of Mount Pleasant, the town of Caledonia, and the city of Racine, defendants; a decree was rendered against the said defendants, and the said defendants, the town of Mt. Pleasant and the town of Caledonia, having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said complainants citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next.

Now the condition of the above obligation *is* such that if the said town of Mount Pleasant and the town of Caledonia shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

O. C. MUNROE. [L. S.]
JOSEPH FUHRMAN. [L. S.]
JAMES CALLAN. [L. S.]

Sealed and delivered in presence of—
C. H. LEE.

Approved by—
CHAS. E. DYER, *Dist. Judge.*

132 EASTERN DISTRICT OF WISCONSIN, *ss.*

At Racine, July 21, 1877, came O. C. Munroe, Jos. Fuhrman, and Jas. Callan, and each being duly sworn doth depose and say, that he is the surety named in the within instrument and that he is worth $1,000, exclusive of property exempt and his debts; and I certify that said sureties are known to me and I believe them responsible for the amount thereof.

CHARLES H. LEE,
U. S. Circuit Court Commissioner, &c.

Whereupon it is ordered that said appeal be and hereby is allowed, and a citation issued.

133 UNITED STATES OF AMERICA, }
EASTERN DISTRICT OF WISCONSIN. } *ss.*

I, Edward Kurtz, clerk of the Circuit Court of the United States of America for the Eastern District of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office, being a full and complete transcript of the record and proceedings in the case of William W. Cornell et al., Executors, &c., vs. The Town of Mt. Pleasant et al., in equity.

In testimony whereof, I have hereunto set my hand, and duly affixed the seal of the said court, at the city of Milwaukee, in said district, this 4th day of October, in the year of our Lord one thousand eight hundred and seventy-seven, and of the independence of the United States the 102nd.

[SEAL.] EDWARD KURTZ, *Clerk.*

134 THE UNITED STATES OF AMERICA, *ss.*

[SEAL.] To William W. Cornell and Latham C. Strong, executors of the last will and testament of Latham Cornell, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to an appeal in the Circuit Court of the United States for the Eastern District of Wisconsin, wherein the town of Caledonia and the town of Mt. Pleasant are appellants, and you are appellees, to show cause, if any there be, why the decree passed against the said appellants should not be reversed and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles E. Dyer, district judge of the United States for the eastern district of Wisconsin, at the city of

Milwaukee, in the said district, this 23rd day of July, A. D. 1877, and of the independence of the United States the 102nd.

CHARLES E. DYER,
District Judge.

We accept service of above citation, this 1st day of August, A. D. 1877.

FULLER & WINSLOW,
Complt's Solicitors.

(Endorsed on cover:) E. Wisconsin, C. C. U. S. No. 527. The Town of Mount Pleasant and the Town of Caledonia, Appellants, vs. William W. Cornell and Latham C. Strong, executors of the last will and testament of Latham Cornell, deceased. Filed 13th October, 1877.